

103
**IMPLEMENTATION OF INDIAN
GAMING REGULATORY ACT**

Y 4. R 31/3:103-17/PT. 1

Implementation of Indian Gaming Reg...

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF PUBLIC LAW 100-497, THE INDIAN GAMING
REGULATORY ACT OF 1988

HEARING HELD IN WASHINGTON, DC
APRIL 2, 1993

Serial No. 103-17, Part I

Printed for the use of the Committee on Natural Resources



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IMPLEMENTATION OF P.L. 100-497, THE INDIAN GAMING REGULATORY ACT OF 1988

FRIDAY, APRIL 2, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:00 a.m. in Room 1100, Longworth House Office Building, Hon. Bill Richardson [chairman of the subcommittee] presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. The hearing will come to order.

This is the first in a series of oversight hearings on the implementation of the Indian Gaming Regulatory Act. Today we will hear testimony from Indian tribes, the Interior Department, the National Indian Gaming Commission, Members of Congress, and Governors of States.

Before we begin, I want to stress the seriousness with which this subcommittee approaches this topic. I believe this to be one of the most significant matters we will deal with in Indian affairs during this 103rd Congress.

I also am compelled to mention that the oversight function is one of the most important activities of the Congress. With a new subcommittee such as this one, oversight is the key to understanding issues, educating Members and framing the debate.

We have deliberately chosen not to consider any specific legislative proposals in these hearings, but rather to keep an open mind with regard to all comments, suggestions and information presented to us. Public policy cannot be properly made unless the concerns of all interested parties are aired and considered.

There are some fundamental points about Indian affairs that I must make at the outset. First, I have been in the Congress for ten years, and I believe that Indian affairs is the one area of the Federal policy in which we have consistently failed in our obligations. Ninety-three thousand Indian people are homeless or living in substandard housing.

Indian adolescents have a suicide attempt rate four times higher than other ethnic groups. Tuberculosis, diabetes, and fetal alcohol syndrome are of near epidemic proportions in Indian country.

Unemployment rates continue to exceed 50 percent on reservations nationwide. These are pervasive problems which, in the age of deficit reduction, will probably never have sufficient federal re-

sources. Tribes nationwide are in desperate need of economic development.

The second point I want to make is with regard to Indian law. In the reading I have done on this subject recently, I have found that there are three fundamental pillars of this body of American law.

First, Indian affairs is strictly a federal function. The Congress has plenary power over Indian policy as it has since the days of treaties.

Second, the States have always been excluded from the Federal-tribal relationship by design. From the early history of the country, it was clear that tribes and States were going to perpetually be in conflict.

Finally, tribes retain all sovereignty not expressly taken away by Congress. This was basically a real estate deal. The United States got the best piece of real property in the world and the tribes kept the right to control totally the small parcels they retained.

In 1988, the Congress altered these pillars a bit by passing the Indian Gaming Regulatory Act. The Act was based on the principles derived from the Supreme Court's ruling in the *Cabazon* case. I am certain that we will hear many interpretations of the Act today, and I summarize it by saying that the Congress divided Indian gaming into three different classes.

Class I are traditional games regulated by tribes.

Class II is bingo, pull-tabs and other games regulated by tribes and the National Indian Gaming Commission.

Class III games are regulated pursuant to the terms of a compact between tribes and States. It was in class III that tribes felt that their sovereignty was compromised. For the first time in American history, they were required to sit down with States to determine what could be done on tribal lands.

Predictably, it is in the area of class III gaming that problems are occurring. States are now seeking to limit the games that tribes can compact for under class III. States are also seeking a clarification of the "good faith" bargaining requirements under the Act.

Finally, States are seeking a clarification of the Governor's role in tribal acquisition of trust land for gaming. We will hear from some States today and in the future on these issues.

Some tribes are also seeking relief. The States have raised the Tenth and Eleventh Amendments in an attempt to preclude federal jurisdiction over compact disputes. Many tribes assert that a return to complete federal regulation in Indian gaming is the only solution. We will hear from some of these tribes today.

It must be noted that there are States where tribes have successfully compacted with the States and the Act seems to be working. We will hear from a governor and several tribes in this enviable situation today.

Let me state before we begin that this subcommittee is committed to seeking the truth on these matters. We are committed to keeping an open mind to the problems of the States and our hearts open to the economic plight of Indian tribes. Our goal is that these hearings be balanced, fair and democratic.

One last note. I have been contacted by several Indian tribes who told me that what may happen here is the press will cover the gov-

ernors and the Members of Congress, but by the time the Indians testify, the press is gone. I can't tell you what to cover, but I have never regretted hearing the tribal perspective.

We have a very long witness list today so I ask that all persons providing testimony summarize their remarks within five minutes and the full written text will be made part of the record. At this time, I request that the summary of the Indian Gaming Regulatory Act be made part of the record.

[The information follows:]

SUMMARY OF THE INDIAN GAMING REGULATORY ACT

On October 17, 1988, the President signed into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. 2701 et seq. The Act provides a system for the regulation of gaming on Indian lands by dividing gaming into three classes, establishing the National Indian Gaming Commission to regulate Class II gaming and authorizing compacts between tribes and states for the regulation of Class III gaming.

Class I Gaming

Class I gaming includes social or traditional gaming which is played in connection with tribal ceremonies or celebrations. Class I gaming is regulated exclusively by the tribes.

Class II Gaming

Class II gaming includes bingo and, if played at the same location as bingo, pull tabs, lotto, punch boards, tip jars, and instant bingo. Class II gaming also includes card games which are authorized by state law or not explicitly prohibited by state law and played at any location in the state. The card games must be played in conformity with state law or regulations regarding hours of operation and pot limits.

A tribe may engage in Class II gaming if the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity. Class II gaming is regulated by the National Indian Gaming Commission and the tribe or solely by the tribe if issued a certificate of self-regulation.

Class III Gaming

Class III gaming includes all gaming not included in Class I or Class II, such as casino-type games, gambling devices, pari-mutuel betting, etc.

Class III gaming is prohibited unless authorized by a tribal-state compact.

Class III Gaming and Tribal-State Compacts

Class III gaming is lawful when it is authorized by a tribal ordinance approved by the chairman of the Commission, is located in a state that permits such gaming (whether for charitable, commercial, or governmental purposes), and is conducted in conformance with a tribal-state compact which has been approved by the Secretary of the Interior.

The Act authorizes an Indian tribe and the state in which the tribe is located to enter a compact governing gaming activities. The compact may include provisions concerning: the application of

tribal or state criminal and civil laws directly related to gaming, the allocation of jurisdiction between the state and the tribe, state assessments to defray the costs of regulating the activity, taxation by the tribe in amounts comparable to state taxation, remedies for breach of contract, standards for the operation and maintenance of the gaming facility, and any other subjects related to the gaming activity.

The state is not authorized to impose a tax or assessment (except assessments that are agreed to) upon a tribe or person authorized by a tribe to conduct a gaming activity. The state cannot refuse to negotiate a compact based on its inability to impose a tax, fee, or other assessment.

The federal districts courts are vested with jurisdiction over: actions by Indian tribes arising from the failure of a state to negotiate with a tribe seeking to enter a compact or to negotiate in good faith, any action by a state or tribe to enjoin a Class III activity which violates the tribal-state compact.

A tribe may initiate an action for failure to negotiate in good faith against a state only after the passage of 180 days from the date the tribe requested the state to enter negotiations for a compact. If the court finds that the tribe has failed to negotiate in good faith, it shall order the state and the tribe to conclude a compact within 60 days.

If the state and the tribe fail to conclude a compact within the 60-day period, the parties are to submit a court-appointed mediator their last best offers for a compact.

The Secretary of the Interior is authorized to approve tribal-state compacts. The Secretary may disapprove a compact if it violates: the Act, any other federal law that does not relate to jurisdiction over Indian gaming, or the trust obligations of the United States to Indians. The compact takes effect once the Secretary publishes a notice in the Federal Register that the compact has been approved.

Gaming on Indian Lands after Enactment

Gaming is prohibited on land acquired by the Secretary in trust for an Indian tribe after the date of enactment of the Act unless: (1) the land is within or contiguous to the tribe's existing reservation boundaries; or (2) if an Oklahoma tribe, the lands are within the tribe's former reservation or the lands are contiguous to other land held in trust or restricted status for that tribe. This prohibition does not apply if the Secretary determines that a gaming facility would be in the best interests of the tribe and its members and would not be detrimental to the local community and the governor of the state concurs with the Secretary's determination. This prohibition also does not apply to

(2) adopted and is implementing an adequate system for: accounting of revenues, investigation, licensing, and monitoring of employees, and investigation, enforcement, and prosecution for violations of its gaming laws; and

(3) conducted the gaming activity on a fiscally sound basis.

Management Contracts

The Chairman may approve a management contract if it provides: (1) adequate accounting procedures; (2) access by tribal officials to the gaming operations in order to verify the daily gross revenues and income; (3) a minimum guaranteed payment to the tribe that has preference over the retirement of development and construction costs; (4) a ceiling for the repayment of such costs; (5) a maximum term of 5 years or, at tribal request, 7 years; and (6) grounds and procedures for terminating the contract.

The management fee cannot exceed 30 percent of the net revenues unless the tribe requests a higher percentage. The Chairman may approve a higher percentage, not to exceed 40 percent, if a higher percentage is justified based on the capital investment and projected income.

All existing ordinances and management contracts, whether or not approved by the Secretary, must be submitted to the Chairman.

Commission Funding

The Commission is authorized to assess each game a fee which is based on a sliding fee scale from one-half of one percent to two and one-half percent on the first \$1,500,000 of gross revenues and up to five percent of amounts over \$1,500,000. The total amount of fees which the Commission can assess in any fiscal year is limited to \$1,500,000. The Commission is authorized to request appropriations in an amount equal to the annual assessment. Section 8. Thus, the commission's annual budget cannot exceed \$3,000,000 (\$1,500,000 from assessments and \$1,500,000 from appropriations). There is authorized to be appropriated in an amount not to exceed \$2,000,000 for the first fiscal year.

lands: taken in trust as part of a settlement of a land claim, comprising the initial reservation of a tribe federally acknowledged, or restored to a tribe that has been restored to federal recognition.

National Indian Gaming Commission

Composition

The Commission is composed of three full-time members with the Chairman appointed by the President and the other two members appointed by the Secretary of the Interior. Two of the three Commissioners must be members of federally recognized Indian tribes and no more than two members can be of the same political party. The Chairman of the Commission is Anthony J. Hope. The two Commissioners are Jana McKeag and Joel Frank.

Powers of Chairman

The Chairman is empowered to: (1) issue temporary closure orders; (2) levy civil fines; (3) approve tribal gaming ordinances; and (4) approve management contracts. The Chairman is also vested with such powers as the Commission may delegate.

Powers of the Commission

The Commission is vested with the following powers which cannot be delegated: (1) approve the annual budget; (2) adopt regulations for civil fines; (3) adopt an annual schedule of fees; (4) authorize Chairman to issue subpoenas; and (5) permanently close a gaming activity.

The Commission is vested with the following additional powers: (1) monitor gaming activities; (2) inspect gaming premises; (3) conduct background investigations; (4) inspect records related to gaming; (5) use the U.S. mails; (6) procure supplies; (7) enter into contracts; (8) hold hearings; (9) administer oaths, and (10) promulgate regulations.

Tribal Self-Regulation

A tribe may petition the Commission for a certificate of self-regulation if it has been engaged in a Class II activity continuously for a three-year period with at least one of the years being after the date of enactment of the Act and has otherwise complied with the Act. The Commission may issue the certificate if it is satisfied that the tribe has:

(1) conducted the gaming activity in a manner that has resulted in an honest accounting of all revenues, has a reputation for a safe and honest operation, and is generally free of evidence of criminal or dishonest activity;

Mr. RICHARDSON. Protocol dictates that Members of the Senate and House testify first, but I have a request of my distinguished colleagues. The Governors of Rhode Island and Colorado are on a tight schedule and have asked my permission to testify first. The Governor of Kansas has the option of joining your fellow governors or waiting.

We apologize if we are not following all the rules of the House.

Before recognizing them, I would like to call on a distinguished Ranking Minority Member, Mr. Thomas of Wyoming.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman. I, too, look forward to hearing the testimony today.

Because of the number of witnesses that we have this morning, I will be brief, Mr. Chairman.

Although I am generally acquainted with the issues before us today, this is my first hearing on Indian gaming as a member of this subcommittee. Therefore, it might be beneficial to state some preliminary observations on the topic at the outset of the hearing.

Tribes, as dependent sovereign entities, have an inherent right to make their own laws and be governed by them. Part of that right, in my view, is to conduct gaming operations on the reservations within the confines of the IGRA. I am a supporter of Indian self-determination and economic self-sufficiency for the tribes, and Indian gaming is an important component of both.

The income derived from gaming allows many tribes to pick themselves up by the bootstraps and fund such vitally important areas as education, health, and housing for tribal members.

Gaming provides badly needed jobs on reservations where unemployment rates can soar to 80 percent. While supporting self-determination, however, I don't support the actions of those few tribes which, absent the support of local communities, would seek to acquire trust land not immediately contiguous to their reservations solely for the purpose of conducting gaming enterprises thereon.

It is clear that the sections dealing with class III gaming—the source of most of the controversy we are faced with today—somehow need to be revisited. Perhaps the Act should be amended to take some of the uncertainties out of the negotiating process between the States and the tribes. Perhaps a fourth class should be created over which the States have more control, in return for which the States would waive their purported Eleventh Amendment defense.

I think that hearings like this one today, at which all sides of the controversy can be heard, are an important step towards finding a solution.

I must say here in regards to the States that I am somewhat troubled by what appears to be the stonewalling position some of them have taken on this issue. Given the Supreme Court's ruling in *Cabazon*, it is clear that the IGRA was in effect a concession to them.

In addition, I do not have much sympathy for States that are refusing to negotiate or have dragged their heels in negotiations and, as a result, suddenly find themselves faced with what they feel are adverse judicial opinions favoring compacts proposed by the tribes.

Finally, I note that some States and other interests have proposed a moratorium on approval of new gaming compacts for up to 2 years while the class III problems are studied. This does not appear to be a solution to the problem.

In closing, I would like to commend the Chairman for taking an active role in this area. I think that it is important that this issue be addressed by both Houses of Congress as we seek to find a fair and equitable solution.

Mr. RICHARDSON. Thank you.

The Chair recognizes the gentlewoman from Arizona.

STATEMENT OF HON. KARAN ENGLISH

Ms. ENGLISH. Thank you, Mr. Chairman. I do not want to take the time to talk too much about myself and my own beliefs at this time. I am more concerned that the tribes and the people who are here today have an opportunity to speak. So I thank you for this opportunity.

I would like to say one thing: There is a gentleman from Arizona who was unable to make it today and has requested that his testimony be put into the permanent record and I request that.

Mr. RICHARDSON. Without objection, that will be done.

[Prepared statement of Ronnie Lupe follows:]

STATEMENT OF
RONNIE LUPE, TRIBAL CHAIRMAN
WHITE MOUNTAIN APACHE TRIBE

BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT HEARINGS ON INDIAN GAMING
APRIL 2, 1993

Mr. Chairman, Members of the Committee, I am Ronnie Lupe, Chairman of the White Mountain Apache Tribe. I appreciate your extending me an opportunity to express my concerns and my frustrations regarding the pace and direction of implementation of the Indian Gaming Regulatory Act, especially in light of recent events in my own state of Arizona.

Mr. Chairman, this concern and frustration was not recently formed. When the Indian Gaming Regulatory Act was first passed in 1988, I expressed my own deep concern about the ambiguities in the law and the obvious incursions that the Act made on Tribal Sovereignty. Unfortunately, I have not changed those views. At the time, I was also encouraged that the principal goal of the Federal Indian policy as stated in the Act was to promote tribal economic development, tribal self-sufficiency and strong tribal governments.

As Chairman of a tribe that has unemployment of 68 percent, we are in obvious and desperate need of job-producing opportunities. The Act seemed to give us another avenue by which we could create jobs by developing a gaming enterprise that would compliment the existing recreational activities on our reservation. We felt that these new jobs would offset the jobs being lost by reductions in our timber harvest.

But I must now report to you and the Members of the Committee that what I once viewed with optimism has turned to skepticism and growing cynicism.

What is happening now, Mr. Chairman, is that some governors, including my own, are bound and determined to deny us this relatively small measure of economic

stimulus. Instead, they raise fears of tribal corruption and the threatened incursion of organized crime--charges that are baseless and that have never been substantiated. It is with some unhappiness that I say we cannot help but believe that this criticism has some racial overtones. Anti-Indian feelings in the West are long-standing and painful and I recall instances where it has affected me directly.

In Arizona, we agreed to mediation in an effort to reach a good faith agreement on a tribal compact with the State. The mediator, the respected jurist Frank X. Gordon, Jr., reached a fair and equitable finding in favor of the Arizona tribes. The Governor, however, is seeking to void the mediator's decision. We believe that he should agree to it. Failing that, we believe the decision should then go to Secretary Babbitt for approval. Secretary Babbitt is a friend and an honorable man. We expect him to do the right thing.

And so, in spite of the bureaucratic delays and the contradictions and ambiguities of the Act itself, and the confusion created regarding what is an "electromechanical facsimile" versus what is an "electronic aid to gaming", some Indian tribes have been able to successfully establish gaming enterprises which clearly benefit many tribal members.

But, instead of being congratulated for our initiative and hard-won successes, Indian gaming activities are being characterized as "illegal" by critics and ill-founded allegations of criminal involvement are being increasingly raised by Federal and state officials to further repress the development of our gaming establishments.

Mr. Chairman, I cannot personally speak about the experience of tribes in other states, but I know that in my state of Arizona there is a fundamental hypocrisy underlying the charges and allegations by state officials and some of the entrenched gaming industry.

We are hopeful that the new U.S. Attorney in Arizona, unlike her predecessor, will find the little time and the inclination to prosecute the numerous Federal offenses occurring on our reservation, crimes which include rustling, pot hunting, vehicular homicide, rape and other major Federal crimes, rather than harass tribal gaming operations.

The fundamental cause of the major social ills on our reservations is unemployment. Indian gaming enterprises have been successful in addressing this problem.

You will have an opportunity to hear from some of those Tribal leaders at this oversight hearing and I am sure they will tell you that a profitable gaming establishment means jobs on their reservation.

Mr. Chairman, I know you to listen to the testimony presented by all sides with care and objectivity. I urge you to pay special attention to the sources and motivations of those who hypocritically criticize and detract. I am of the firm opinion that there is a conspiracy afoot to suppress Indian gaming and that conspiracy has nothing to do with protecting Indians from the social ills associated with gaming. And it has everything to do with competition and greed.

Again Mr. Chairman and Members of the Committee, I appreciate this opportunity to present my views on this critical issue.

###

Mr. RICHARDSON. The Chair recognizes the gentleman from California.

STATEMENT OF HON. KEN CALVERT

Mr. CALVERT. Thank you, Mr. Chairman.

My office this week has been a popular stopping off spot and meeting place. As the only California Representative who sits on this subcommittee, many groups have stopped by my office to discuss the complex issue of Indian gaming.

California has a rich Indian heritage and culture. Riverside County, where I reside, has dozens of tribes, many of which rely on gaming to survive in these tough economic times.

I am part Cherokee Indian and firmly believe tribes have the right to survive as sovereign entities and govern themselves as they see fit. With any governing body, to economically prosper is vital to the survival of that nation.

Indian gaming has been that industry that has allowed many tribes to provide jobs for their citizens and to provide valuable infrastructure to the community. I support, under the auspices of IGRA, a tribe's right to allow gaming on their lands.

However, I do not support expanding gaming operations beyond noncontiguous lands without the approval of the local community.

As mentioned before, for the most part, the provisions of IGRA have tried to protect the interests of all interested parties in Indian gaming. Nonetheless, I do have some reservations on the subject of class III gaming.

Some sections dealing with this issue have been controversial, to say the least. I hope today's hearing will help clarify these topics.

Thank you.

Mr. RICHARDSON. I thank the gentlemen.

[Prepared statement of Mr. Calvert follows:]

OPENING STATEMENT OF CONGRESSMAN KEN CALVERT
INDIAN GAMING OVERSIGHT HEARING - APRIL 2, 1993

Thank you, Mr. Chairman.

My office this week has been a very popular stopping off spot and meeting place. As the only California representative that sits on a Native American committee, many groups have stopped by my office to discuss the complex issue of Indian Gaming. California has a rich Native American heritage and culture. In Riverside County, where I reside, we have dozens of tribes, many of whom rely upon gaming to survive in these tough economic times.

I am part Cherokee Indian and firmly believe tribes have the right to survive as sovereign entities and govern themselves as they see fit. With any governing body, to economically prosper is vital to the survival of that nation. Indian gaming has been that industry that has allowed many tribes to provide jobs for their citizens and to provide valuable infrastructure to the community. I support, under the auspices of IGRA, a tribe's right to allow gaming on their lands. However, I do not support expanding gaming operations beyond non-contiguous lands without the approval of that local community.

As mentioned before, for the most part, the provisions of IGRA has tried to protect the interests of all interested parties in Indian gaming. Nonetheless, I do have some reservations on the subject of Class 3 gaming. Some sections dealing with this issue have been controversial to say the least. I hope in today's hearing and in future hearings on this subject we can clarify many of these topics.

I thank the Chairman for his concern in this area and look forward to working with him and my other colleagues in working to find a solution to this complex area.

PANEL CONSISTING OF HON. ROY ROMER, GOVERNOR, STATE OF COLORADO, AND CHAIRMAN, NATIONAL GOVERNORS' ASSOCIATION; HON. JACK REED, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND; HON. BRUCE SUNDLUN, GOVERNOR, STATE OF RHODE ISLAND; HON. BEN NIGHORSE CAMPBELL, A SENATOR IN CONGRESS FROM THE STATE OF COLORADO; AND HON. JOAN FINNEY, GOVERNOR, STATE OF KANSAS

Mr. RICHARDSON. I would like the Honorable Roy Romer, Governor of State of Colorado and Chairman of the National Governors' Association to come to the podium, along with the Honorable Bruce Sundlun, Governor of the State of Rhode Island, the Honorable Joan Finney, Governor, State of Kansas the Honorable Ben Nighthorse Campbell, distinguished Senator from Colorado, and the Honorable Jack Reed, Representative from Rhode Island.

We appreciate your coming. We know you are all on tight schedules, especially the governors.

I would like to recognize the chairman of the National Governors' Association, a great friend, chairman of the Democratic Platform Committee, one of the leaders in the country on education issues and many others, the Honorable Roy Romer.

Governor, please proceed.

STATEMENT OF HON. ROY ROMER

Governor ROMER. Thank you, Congressman.

I will be as brief as possible because the testimony that I am offering on behalf of the National Governors' Association will be offered to you.

The first thing I want to say very clearly is that on behalf of myself and all governors, I do not want this statement and position of ours to in any way be interpreted as anti-tribe. I think that we have an obligation as governors to work as closely as possible for the economic development of all tribes in this country.

I am going to see that it gets on our agenda at the National Governors' Association. And to all of the tribal members in the room, I want to state that I and other governors absolutely want to join with you in economic development of your interests.

The issue here is very critical. It is, Can the citizens of a State determine the basic conditions that affect the culture of a State. That is a very basic issue.

Let me use Colorado as an illustration. We have had repeated ballot initiatives in Colorado, five the last election, on the issue of how much gaming to permit. It is taken very seriously in our State.

I have been on the opposite end of half of those initiatives. I know how seriously people take it. I think that one of the most basic elements of democracy is that a people organized in a State have the ability to determine the basic conditions of their culture.

Now I believe that when the gaming law was passed in Congress, it was the intention of that law to comply with the law and policy of the State and that within that law and policy we should negotiate in good faith. As Governor of Colorado I have done that.

We have a compact, government-to-government, with both of the tribes in Colorado. We are proceeding. We have limited gaming in Colorado.

I think this would be very wrong for the courts of this country, or for the laws of this country, to impose upon the citizens of Colorado a condition that is foreign to them, foreign to their values as it relates to gaming. The present interpretation of this law by the courts is dangerously close to that.

I have been following the cases, for example, in Arizona. I understand the circumstances in California. You see, for the Federal Government, through a law interpreted by the courts, to say you are going to have casino gambling whether you like it or not, is so offensive—and I use the term “offensive”—to what I think are the basic tenants of democracy, I think it needs to be checked.

I believe it is a problem that we can solve. We can solve it in the following way, and that is: To clarify federal legislation so it says that we really do mean what we say; this needs to comply with State law. To clarify, to negotiate in “good faith” does not mean that you have to override your own State law if you are governor; and to negotiate in “good faith” should be, I believe, clarified to where “good faith” should be there on both parties and not one. I think any negotiation requires that.

Now on the side of those who are advocating that the economic development opportunities of the Indian community demand that it have a preferential status, it does have a preferential status in that it is not taxed. I think that is a substantial preference.

But to continue to say that you need to override the ability of the citizens of a State to control its own culture in the name of economic advantage in gaming is a very, very bad policy. As one who has been in government for a long while, in the House of Representatives, in the Senate of Colorado, in several offices at the State level in Colorado, and now as Governor and as chairman of the National Governors’ Association, I, frankly, am alarmed. I am alarmed at the current series of judicial decisions.

I am alarmed because I do not believe that it was the intention of Congress when it passed the Indian gaming law to override the laws of the State. I believe there is a way that we can work this out, that we can find a way to fully empower the tribal governments to do everything that is lawful within the State, to do it in a compact relationship and to do it in ways that are to their economic advantage.

I would like to submit to you the official statement of the Governors’ Association which has three points. First, that the tribes should be able to operate gaming with the same types and subject to the restrictions of the other gaming laws of the State.

Second, that “good faith” in the Act should be clarified and applied to both the States and the tribes.

And third, that we need a clarification of the ability of a State to bar gaming on property taken into trust subsequent to the effective date of the Indian Gaming Regulatory Act.

The Department of the Interior has clearly acknowledged that the governor’s concurrence is required before non-contiguous lands can be acquired for gaming purposes.

Thank you.

Mr. RICHARDSON. Thank you.

[Prepared statement of Governor Romer follows:]

T E S T I M O N Y



**Statement of
The Honorable Roy Romer
Governor of Colorado**

and

Chairman of the National Governors' Association

before the

**Subcommittee on Native American Affairs
Committee on Natural Resources
U.S. House of Representatives**

on

Indian Gaming

April 2, 1993

N A T I O N A L G O V E R N O R S ' A S S O C I A T I O N

Hall of the States • 444 North Capitol Street • Washington, DC 20001-1572 • (202) 624-5300

Mr. Chairman and members of the subcommittee, I am Roy Romer, Governor of Colorado, and chairman of the National Governors' Association. I am pleased to appear today on behalf of the nation's Governors to discuss gaming on Indian tribal lands.

I would like to say at the outset that, with one dissenting vote, the nation's Governors adopted a resolution just two months ago (February 2, 1993) outlining our concerns about the implementation of the Indian Gaming Regulatory Act (IGRA) of 1988. This resolution, of which I believe the committee is aware, makes clear that Governors support the efforts of Native Americans to create better and more prosperous lives.

One of the greatest tragedies in this debate over Indian Gaming is the misimpression that states are not respectful of tribal sovereignty and not desirous of improved economic opportunity for Native Americans. We ought not let the debate over gaming overshadow the responsibility of the federal government and the states to work more aggressively to assist the tribes in achieving greater economic opportunity.

We need to put tribal economic development on the Governors' agenda -- and I want this committee to know that conversations I have had with Governors lead me to believe that there would be strong across-the-board support for making this happen. We need to recognize, however, that gaming is a unique kind of economic development. The impacts of gaming can be economically beneficial -- but they can also be extremely negative.

The National Governors' Association has just recently begun to explore solutions to several issues that have arisen in the implementation of IGRA. The purpose of the act was to provide greater opportunities for tribal economic development and self-sufficiency, while giving the states a significant role in the kind of gaming activities that would be conducted within state borders. We believe that Native Americans should have every opportunity for economic development, but we are also very deeply concerned about the prospects for casino gambling spreading throughout our states. We want to discuss these concerns with you and other congressional leaders and to resolve them satisfactorily to fulfill the intent of the act. The confused

situation created by some federal courts has resulted in an adversarial climate and strained communication, which have made implementation of the act very difficult.

Unless these issues are satisfactorily resolved, we feel the objectives of IGRA will never be fully realized, with the result that the statutory provisions and application of IGRA will be constantly challenged in court. As you know, several federal district courts have already declared the act to be unconstitutional. Continuing the conflict and litigation, with its high cost and uncertain results, makes little sense and diverts attention from effective solutions.

Let me explain what troubles Governors most. I believe that the basic public policy and culture of a state is a fundamental issue for the citizens of a state to decide, and for the elected state leadership to uphold. This policy is not something to be imposed by a federal court or a federal mediator.

The breadth and scope of Class III gaming on Indian lands has been particularly controversial. When it passed IGRA, Congress intended that the operation of Class III games on tribal lands conform with state laws. Legislators in both the Senate and the House explained that the types of Class III games that would be the subject of tribal-state compacts were those games expressly permitted under state law.

Recent federal court decisions, most recently in the Wisconsin case, have seriously undermined this original legislative intent by creating an "any means all" standard. The Wisconsin case suggests that if a state allows any type of Class III gaming, then the state is obligated to negotiate a compact with the tribe to operate all forms of Class III gaming.

Governors are strongly opposed to states being left out of a regulatory role altogether, but we want clarification in the law that the types of gaming that are permissible are those expressly authorized by state law. Does the playing of one Class III game require a state to negotiate a compact for all Class III games? We think not and believe this result was not intended by the legislation. The "any means all" standard applied in several states following

the decision in the Wisconsin case has made it extremely difficult to effectively negotiate state-tribal compacts. We believe the statute should make clear that tribes can operate gaming of the same types and subject to the same restrictions that apply to all other gaming in each state.

The meaning of "good faith" in IGRA also needs to be clarified and applied to both states and tribes. The burden of proving the allegation should rest with the party alleging bad faith. Mere inability to agree upon the compact should not presume bad faith for either side. And a state's adherence to its own laws and constitution ought not be regarded as bad faith.

Both parties have an equal interest in concluding an effective compact. As it stands now, stalled negotiations and raised temperatures on both sides are the consequences of this confusion over what constitutes "good faith."

Finally, there must be clarification of the ability of a state to bar gaming on property taken into trust subsequent to the effective date of IGRA. The Department of Interior has acknowledged that a Governor's concurrence is required before non-contiguous land can be acquired for gaming purposes. We need your help in working with the Department of Interior to establish procedures for addressing state concerns when a gaming operation on tribal lands has negative impacts across state lines.

We welcome the decision by the department in the Oregon case that land could not be acquired for gaming purposes over a Governor's objection. We would like to discuss ways to improve this provision to leave no doubt about the Governor's role and to allow the views of all affected Governors to be heard when a gaming proposal has impacts across state lines.

Mr. Chairman, I will summarize our views briefly. Governors support the efforts of tribes within their states to pursue opportunities for economic development that will create a better future. While some Governors have strong concerns about the role that gaming should play in those economic development strategies and, indeed, in the overall culture of the state, we want to work with you to improve the implementation of the act. We particularly ask that you clarify the scope of gaming activities so that

states are not obligated to negotiate for games that are not expressly authorized by state law.

We hope to have these issues clarified soon, so that we can move beyond the conflict, which is unproductive for both states and tribes. While this hearing today is perhaps helpful in getting a variety of viewpoints into the record, I am hopeful that there will be opportunities for informal dialogue apart from the hearing room and the court room. There is a need for all of us to understand each other's interests and to seek accommodations that will serve our common interests.

Mr. Chairman, this issue is complicated in part by a long and very tragic history of mutual neglect by federal and state governments in addressing the economic needs of tribes. While some Governors have strong concerns about the role that gaming should play in tribal economic development, we want to work with you to improve the implementation of IGRA and to address tribal economic development.

Thank you for the opportunity to testify today on behalf of the Governors. We want to work closely with you as you consider legislation this year. I would be glad to respond to any questions at this time.



INDIAN GAMING

Preamble

The implementation of the Indian Gaming Regulatory Act (IGRA) of 1988 has generated several issues of serious concern to Governors. These issues must be satisfactorily resolved, or it will be impossible to realize the objectives of the act. Although the process established by the act has yielded some successes, it also has led to conflict and litigation that are not productive for either the states or the tribes and that tend to threaten overall state-tribal relations.

Governors support the efforts of Native Americans to create better and more prosperous lives, and they desire good relations with tribes located within their states. Governors do not seek to prevent Native Americans from pursuing any opportunity available to other citizens of their states. At present, however, some Governors find themselves in the position of being expected to negotiate Indian gaming compacts that would be in conflict with the laws of their states and beyond the requirements of IGRA.

Recommendations

To reduce conflict between states and tribes, several key issues arising from IGRA must be resolved. To this end, the nation's Governors take the following positions.

- It must be made clear that tribes can operate gaming of the same types and subject to the same restrictions that apply to all other gaming in the state. In particular, it should be clarified that a state is not obligated to negotiate a compact to allow a tribe to operate any and all forms of Class III gaming simply because a state allows one form of Class III gaming. Only those games expressly authorized by state law should be permitted.
- The meaning of "good faith" in the act should be clarified and applied to both states and tribes, and the burden of proving the allegation should rest with the party alleging that the other side is not acting in good faith. Mere inability to agree upon a compact should not indicate bad faith by either party. In particular, a state's adherence to its own laws and constitution should not be regarded as bad faith. Clarification and expansion of the "good faith" standard would result in both parties having an equal interest in satisfactorily concluding a compact, rather than putting one party at a disadvantage.
- There must be clarification of the ability of a state to bar gaming on property taken into trust subsequent to the effective date of the Indian Gaming Regulatory Act. The U.S. Department of the Interior now has acknowledged that a Governor's concurrence is required before noncontiguous land can be acquired for gaming purposes. The ability of a Governor to give partial concurrence to a tribe's proposal to take land into trust for gaming purposes, such as when a Governor is willing to authorize the playing of some types of games but not others, should be recognized. Additionally, the secretary of the interior should establish procedures to permit the views of all affected Governors to be heard when a gaming proposal has impacts across state lines.

Time limited (effective February 1993-February 1995).

Adopted February 2, 1993.

Mr. RICHARDSON. To introduce Governor Sundlun, I will ask our colleague, Jack Reed, to please proceed.

STATEMENT OF HON. JACK REED

Mr. REED. Thank you, Mr. Chairman.

I am pleased to have this opportunity to introduce Governor Bruce Sundlun to discuss this important issue, which is of concern to many of my constituents.

Clearly, there is a need for greater economic opportunities for Native American tribes. However, I do not think that an explosion of gaming activities will prove to be the long-term solution to this problem. I believe that employment and education initiatives on tribal lands would be a more productive method of ensuring equitable economic opportunities for Native Americans.

As you may know, the State of Rhode Island is currently involved in litigation with the Narragansett Indian Tribe to prevent casino gambling, a form of gaming that to date has not been authorized by the State of Rhode Island.

I believe that this oversight hearing is an appropriate venue to explore possibilities of reform for the Indian Gaming Regulatory Act of 1988. The time has come to reevaluate the provisions of this Act, which have resulted in a drastic increase in gaming activities and lawsuits throughout the United States.

There are a number of issues that should be considered in the evaluation of the Indian Gaming Act.

I believe the policy underlying the Indian Gaming Act was to allow tribes to conduct gambling activities available under State law. However, through imprecise statutory language and a proliferation of Federal District Court decisions, the initial policy has been expanded to encourage tribes to attempt to develop gambling operations that are prohibited under State law; casino gambling being a frequently cited example of this phenomenon. The Indian Gaming Regulatory Act should be revised to restore its original intent by allowing only those specific forms of gambling that are currently authorized by State law and similarly disallowing those forms of gambling specifically prohibited by State law.

There is also a need to clarify the fact that the Indian Gaming Regulatory Act was never intended to pre-empt agreements negotiated between the tribes and the States. Governor Sundlun will speak specifically to this issue as it affects Rhode Island.

Finally, the Indian Gaming Regulatory Act should provide for an increased level of involvement for communities that would be directly impacted by the proposed gaming facility.

There should also be greater representation for the States on the National Indian Gaming Commission, which regulates the gaming activities of Native American tribes. In this way, the interests of all parties affected by Indian gaming can be represented.

Thank you for this opportunity to speak today.

I am pleased to introduce Governor Bruce Sundlun at this time.

[Prepared statement of Mr. Reed follows:]

TESTIMONY OF REPRESENTATIVE JACK REED (2ND DIST- RI)
OVERSIGHT HEARING ON THE INDIAN GAMING REGULATORY ACT OF 1988
APRIL 2, 1993

I AM PLEASED TO HAVE THIS OPPORTUNITY TO INTRODUCE GOVERNOR BRUCE SUNDLUN TO DISCUSS THIS IMPORTANT ISSUE, WHICH IS OF CONCERN TO A GREAT MANY OF MY CONSTITUENTS.

CLEARLY, THERE IS A NEED FOR GREATER ECONOMIC OPPORTUNITIES FOR NATIVE AMERICAN TRIBES. HOWEVER, I DO NOT THINK THAT AN EXPLOSION OF GAMING ACTIVITIES WILL PROVE TO BE THE LONG TERM SOLUTION TO THIS PROBLEM. I BELIEVE THAT EMPLOYMENT AND EDUCATION INITIATIVES ON TRIBAL LANDS WOULD BE A MORE PRODUCTIVE METHOD OF ENSURING EQUITABLE ECONOMIC OPPORTUNITIES FOR NATIVE AMERICANS.

AS YOU MAY KNOW, THE STATE OF RHODE ISLAND IS CURRENTLY INVOLVED IN LITIGATION WITH THE NARRAGANSETT INDIAN TRIBE TO PREVENT CASINO GAMBLING, A FORM OF GAMING THAT TO DATE HAS NOT BEEN AUTHORIZED BY THE STATE OF RHODE ISLAND.

I BELIEVE THAT THIS OVERSIGHT HEARING IS AN APPROPRIATE VENUE TO EXPLORE POSSIBILITIES OF REFORM FOR THE INDIAN GAMING REGULATORY ACT OF 1988. THE TIME HAS COME TO REEVALUATE THE PROVISIONS OF THIS ACT, WHICH HAVE RESULTED IN A DRASTIC INCREASE IN GAMING ACTIVITIES AND LAWSUITS THROUGHOUT THE UNITED STATES.

THERE ARE A NUMBER OF ISSUES THAT SHOULD BE CONSIDERED IN THE EVALUATION OF THE INDIAN GAMING ACT.

I BELIEVE THE POLICY UNDERLYING THE INDIAN GAMING ACT WAS TO ALLOW TRIBES TO CONDUCT GAMBLING ACTIVITIES AVAILABLE UNDER STATE LAW. . . HOWEVER, THROUGH IMPRECISE STATUTORY LANGUAGE AND A PROLIFERATION OF FEDERAL DISTRICT COURT DECISIONS, THE INITIAL POLICY HAS BEEN EXPANDED TO ENCOURAGE TRIBES TO ATTEMPT TO DEVELOP GAMBLING OPERATIONS THAT ARE PROHIBITED UNDER STATE LAW; CASINO GAMBLING BEING A FREQUENTLY CITED EXAMPLE OF THIS PHENOMENON. THE INDIAN GAMING REGULATORY ACT SHOULD BE REVISED TO RESTORE ITS ORIGINAL INTENT BY ALLOWING ONLY THOSE SPECIFIC FORMS OF GAMBLING THAT ARE CURRENTLY AUTHORIZED BY STATE LAW AND SIMILARLY DISALLOWING THOSE FORMS OF GAMBLING SPECIFICALLY PROHIBITED BY STATE LAW.

THERE IS ALSO A NEED TO CLARIFY THE FACT THAT THE INDIAN GAMING REGULATORY ACT WAS NEVER INTENDED TO PRE-EMPT AGREEMENTS NEGOTIATED BETWEEN THE TRIBES AND THE STATES. GOVERNOR SUNDLUN WILL SPEAK SPECIFICALLY TO THIS ISSUE AS IT AFFECTS RHODE ISLAND.

FINALLY, THE INDIAN GAMING REGULATORY ACT SHOULD PROVIDE FOR AN INCREASED LEVEL OF INVOLVEMENT FOR COMMUNITIES THAT WOULD BE DIRECTLY IMPACTED BY THE PROPOSED GAMING FACILITY. THERE SHOULD ALSO BE GREATER REPRESENTATION FOR THE STATES ON THE NATIONAL INDIAN GAMING COMMISSION, WHICH REGULATES THE GAMING ACTIVITIES OF NATIVE AMERICAN TRIBES. IN THIS WAY, THE INTERESTS OF ALL PARTIES AFFECTED BY INDIAN GAMING CAN BE REPRESENTED.

THANK YOU FOR THIS OPPORTUNITY TO SPEAK TODAY AND I AM PLEASED TO INTRODUCE GOVERNOR BRUCE SUNDLUN AT THIS TIME.

Mr. RICHARDSON. Governor, welcome.
Thank you for coming.

STATEMENT OF HON. BRUCE SUNDLUN

Governor SUNDLUN. Thank you, Mr. Chairman.

Rhode Island has been odd man out since the Revolution. All of you celebrate your independence on July 4. We celebrate on May 7 because we declared our independence two months earlier. The allegation is that we did not sign the Constitution until two years after everybody else because we would not sign it until they agreed to put the Bill of Rights on it.

I have a peculiar problem here today, too. We in Rhode Island are faced with an issue of paramount importance to us—the issue of whether a \$40 million gambling casino will be built on Native American tribal lands without compliance with any of our State's criminal, civil and regulatory laws.

We have one federally recognized tribe, the Narragansett Tribe.

In 1973, we entered into negotiations with the Narragansett Tribe and the outcome was the Indian Claims Settlement Act which gave them 1,800 acres of land to establish a reservation in a place called Charlestown. That Settlement Act with the Native Americans was, I think, the first in the United States. Five other settlement agreements were subsequently agreed to between States and tribes.

Pursuant to the terms of the Settlement Act, the tribe agreed that their settlement land would be subject to Rhode Island's criminal, civil and regulatory laws. The Settlement Act was signed into law by the Congress in 1978. Both the Federal and State statute expressly provide that tribal settlement lands shall be subject to the jurisdiction of Rhode Island and its criminal, civil and regulatory laws.

Currently, in Rhode Island, by statute, the voters have permitted some forms of gaming for 20 years. In 1973, the legislature permitted a jai alai fronton to be built at Newport. In 1976, dog racing was authorized in Lincoln. In 1991, simulcast was permitted at Lincoln and Newport. The State also allows charitable groups one-day Las Vegas nights.

In 1988, ten years after our Settlement Act was enacted, the Congress signed the Indian Gaming Regulatory Act, IGRA. At the time IGRA was approved by Congress, Rhode Island's two Senators, Claiborne Pell and John Chafee were assured by Dan Inouye, Chairman of the Select Committee on Indian Affairs, that the protections of the Rhode Island Indian Claims Settlement Act will remain in effect and be subject to the civil, criminal, and regulatory laws of the State.

The committee report summarizes the provisions of IGRA. It was given to the legislators before they voted on the Act.

It says: "It is the intention of the Committee that nothing in the provisions of this section or in this Act will supersede any specific restriction or specific grant of federal authority or jurisdiction to a State which may be encompassed in another federal statute, including the Rhode Island Claims Settlement Act," which is specifically mentioned.

Now, in Rhode Island, despite the specific legislative history on this point, we have a Federal District Court decision which came down a few weeks ago on March 5, which ignores the legislative history. The District Court declares that without specific language in IGRA recognizing the exception for the Narragansett Tribe, that the negotiated language of the Settlement Act is to be given no effect. Senator Inouye, in his remarks at the March 19 meeting with the representatives of the Indian Tribal Government, took sharp exception to that decision of the court.

He said: "It was clear to us at the time the Senate was considering the Gaming Act. We said so in the Senate Committee Report . . . and the colloquy between myself and Senators Chafee and Pell—that civil, criminal and civil regulatory laws of the State of Rhode Island would apply to tribal lands."

The tribe has taken the position that IGRA supersedes the Settlement Act and the District Court's decision supports that conclusion. The tribe has declared that it is not subject to Rhode Island's civil, criminal and regulatory laws. The tribe claims that because Rhode Island, by statute, permits some forms of class III gaming, IGRA should be interpreted to allow the tribe to conduct all forms of Class III gaming.

We do allow casino gaming, but only after a local referendum and a statewide referendum. The tribe contends simply that it is not subject do that.

We have spoken clearly in the past through legislation, and opposition to casino gambling in Rhode Island is today the biggest political issue in the State. It is front page practically every day.

The people of Rhode Island are concerned about preserving the quality of our small State. You have gambling in Charlestown, you have gambling all over the State. It is only 50 miles long.

So we are here today to ask you to consider adopting statutory provisions to assure that our quality of life will be preserved unless the people of our State agree to change it by statutory referendum.

We have in "good faith" negotiated an agreement with the tribe. We want the tribe to abide by the Settlement Act.

I advocate an amendment to IGRA to recognize that the provisions of our Settlement Act clearly control, and that the tribe is subject to Rhode Island's criminal, civil and regulatory law. We are permitting gambling in Newport and Lincoln. We do not permit it in Charlestown. Without that statute, we should not have a casino in Charlestown.

Thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you, Governor.

[Prepared statement of Governor Sundlun follows:]



State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

Bruce Sundlun
Governor

Governor Bruce Sundlun's
Prepared Testimony Delivered Before the
House Committee on Natural Resources
Subcommittee on Native American Affairs
Friday, April 2, 1993

We in Rhode Island are faced with an issue of paramount importance — the issue of whether a \$40 million gambling casino will be built on Native American tribal lands without compliance with any of our State's criminal, civil and regulatory laws.

I am here before you today to better inform you as to the critical nature of Rhode Island's problem.

Rhode Island has one federally recognized tribe - the Narragansett Tribe. In 1978, Rhode Island entered into negotiations with the Narragansett Tribe. The outcome of such negotiations was the Rhode Island Indian Claims Settlement Act which gave the Narragansett Tribe 1800 acres of land to establish a reservation in Charlestown. This successfully negotiated settlement with Native Americans was one of the first of its kind in the United States. Five other settlement agreements between states and tribes were subsequently entered into. Pursuant to the terms of the Settlement Act, the Tribe agreed that their settlement tribal lands would be subject to Rhode Island's criminal, civil and regulatory laws. The Settlement Act was signed into law by the United States Congress on September 30, 1978. Both the federal and state statutes expressly provide that tribal settlement lands shall be subject to the jurisdiction of the State of Rhode Island and its criminal, civil and regulatory laws.

Currently, in Rhode Island, by statute, the voters have permitted some forms of gaming for twenty years. In 1973, the legislature permitted a jai alai fronton to be built at Newport. In 1976, dog racing was authorized in Lincoln. In 1991, simulcast was permitted at Lincoln and Newport. The State also allows charitable, one-day Las Vegas nights.

In 1988, ten years after the Settlement Act was enacted, the United States Congress signed into law the Indian Gaming Regulatory Act (IGRA). At the time that IGRA was approved by Congress, Rhode Island Senators Claiborne Pell and John Chafee were assured by Senator Daniel Inouye, presently the Chairman of the Select Committee on Indian Affairs, that "the protections of the Rhode Island Indians Claims Settlement Act (P.L. 95-395) will remain in effect and that the Narragansett Indian Tribe will remain subject to the civil, criminal and regulatory laws of the State of Rhode Island." Furthermore, a Senate subcommittee report that summarizes the provisions of IGRA and was given to legislators before they voted stated "it is the intention of the Committee that nothing in the provisions of this section or in this Act will supersede any specific restriction or specific grant of federal authority or jurisdiction to a State which may be encompassed in another federal statute, including the Rhode Island Claims Settlement Act."

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Now, in Rhode Island, despite the specific legislative history on this point, we are faced with a United States District Court decision decided on March 5, 1993 which ignores the legislative history.¹ Instead, the District Court declares that without specific language in IGRA recognizing an exception for the Narragansett Tribe, the negotiated language of the Settlement Act which subjects the Narragansett tribal lands to the jurisdiction of Rhode Island and its laws, is to be given no effect. Senator Inouye in his remarks recently before the March 19, 1993 meeting with Representatives of Indian Tribal Governments took sharp exception to the decision of the District Court stating that "...It was clear to us at the time the Senate was considering the Gaming Act. We said so in the Senate Committee Report accompanying the Gaming Act and the colloquy between myself and Senators Chafee and Pell - that the civil, criminal and civil regulatory laws of the State of Rhode Island would apply to tribal lands".

The situation Rhode Island is faced with is that the Tribe has taken the position that IGRA supersedes the provisions of the Settlement Act, and the District Court decision supports that conclusion. The Tribe has declared that it is not subject to Rhode Island's criminal, civil and regulatory laws. The Tribe also claims that because Rhode Island by statute permits some forms of Class III gaming, IGRA should be interpreted to allow the Tribe to conduct all forms of Class III gaming, including casino gaming. Currently, by statute, Rhode Island does allow casino gaming, but only after such casino gaming is approved by both local and statewide referendum. The Tribe contends it is simply not subject to the State's laws requiring such referendums.

The people of Rhode Island have spoken clearly in the past through legislation - they want gaming in our State limited to two locations: the Newport Jai Alai and the Lincoln Dog Track. Opposition to casino gaming is probably the most political and vociferous issue in Rhode Island today. Numerous bills have been recently introduced in our legislature to repeal casino gaming in our State. The people of Rhode Island are fundamentally concerned about preserving the quality of life in our small State. Since we have the smallest state in the country, virtually anything that occurs in one town affects the State as a whole. The construction of a \$40 million gambling casino would drastically impact and change forever our state culture and its infrastructure.

To conclude, we have thoughtfully and carefully adopted statutory provisions to assure that our quality of life will be preserved unless the people of our State agree to change it by statutory referendum. We have in good faith negotiated an agreement with the Narragansett Tribe and are concerned about preserving the protections afforded by that agreement. I am, therefore, advocating an amendment to IGRA to recognize that the provisions of the Rhode Island Settlement Act clearly control, and that the Tribe is subject to Rhode Island's criminal, civil and regulatory laws, which at present do not permit casino gaming and which limit gaming to jai alai, dog racing, simulcast, and video gaming at two limited, specific locations: Newport and Lincoln.

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¹ The 180-day period for negotiating the State-Tribal Compact has been stayed pending the outcome of the State's appeal of the District Court decision.

Mr. RICHARDSON. We will now hear from our good friend and former colleague on this subcommittee, Senator Ben Nighthorse Campbell.

Let me say before you testify that I know Governor Romer and Governor Sundlun have very tight schedules. Governors, whenever you like, you are excused. We appreciate your being with us.

Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL

Senator CAMPBELL. Thank you, Mr. Chairman.

I am delighted to be able to come back and speak on this issue.

I would like to include my written testimony on this issue and make some comments based on really my own personal observations as I have watched Indian gaming grow.

I am happy to see Esteban Torres here today who, as you know, was a prime sponsor of the class III Gaming Act when we worked on it a number of years ago.

I am happy to see my friend and colleague Governor Romer. We may not always agree, but we agree that we have been great friends for many years. I consider him one of the people who has been especially sensitive to Indian issues.

Our State, as you know, in past history was the location of the notorious Sand Creek Massacre, and we have come a long way in Colorado since the days of the Indian wars. I was here working with you when we dealt with the legislation to enable class III gaming.

I know, as you do, that it was not a perfect bill. It has not become a perfect law. I suppose none of them are. But I think it did put in place a new way for Indian people to support themselves.

I would like to reiterate what you have already alluded to. That is that it is important to remember that most Indian tribes are not rich in natural resources. There has been between 50 and 70 percent unemployment. They have, roughly, five times the national average of high school dropouts, suicide, fetal alcohol syndrome, substance abuse, the many things that you mentioned.

Clearly, at least part of that problem is related to the lack of meaningful jobs, particularly on reservations. Most tribes have no capital investment funds and they cannot borrow it because you cannot put reservation land up as collateral to get loans.

Most tribes do not, contrary to popular belief, have bountiful coal, oil or gas, and most of them in fact have tried dozens of other business ventures only to see them fail because of either government restrictions or the difficulty of getting to marketplaces, or being undercapitalized, or a number of other reasons.

I have to tell you, Mr. Chairman, in all honesty, I think that every Indian would say it is not enough to have a beer named after us or sports teams named after us. We have a right for economic growth as any other American does. I think it is rather ironic that this government which has broken every single treaty in the history of dealing with American Indians, and which still professes to want to help them, but rarely does as much as we help foreign countries, is now reviewing and considering more restrictions on one of the few industries the Indian people have found which breaks the bonds of poverty and government dependency.

We have bailed out the S&L industry, and in the process, we have spent \$150 billion on it in the last few years, and we are talking about putting another \$50 billion in them, while some of the folks responsible for that are living in yachts in the Caribbean now. And yet Indians come back here every year and have to scratch for every dime just to stay alive on those reservations.

I know you are as aware of that as I am, because you have worked so hard with Indian communities in your own district, Mr. Chairman.

But, to be sure, Indian gaming has created some problems. But the ones that were predicted when we held the hearings years ago never came about, to my knowledge. We were told then if we put Indian gaming in place, tribes would be overrun with organized crime and the Mafia. That never happened. They just simply did not materialize, many of the doomsday prophecies that were made when we dealt with it. Indeed, the benefits to State and local communities have far outweighed the detriments.

I will use one case. Governor Romer spoke about the two land-based tribes we have in Colorado, the Southern Utes and the Ute Mountain Utes. The southern Utes will be opening a casino in about two more months, per their contractual agreement with the State with their signed compact. The Ute Mountain Utes have been in operation about a year now.

I have been over there a number of times to ask them how things are going for the tribal members and the people around that area. I think that the benefits far outweigh the detriments.

I talked with the Colorado State Patrol. You might say the detriment is an increase of 3,000 cars a day on a two-lane highway that goes to the reservations and probably some added resources that have to take care of the increased numbers of people. Certainly, the increased numbers of people in that area has helped all the local motels, the local restaurants, including some of the gate fees of our scenic byways and our scenic areas like Mesa Verde.

There are no restaurants, just one small one at the tribal casino, no motels at all. That means most of the people who come to that casino stay in downtown Cortez. So they reap the benefits of a tribal casino, too.

In addition, over half of the employees of the casino are not Indian. They hired some of their own members but also, as an act of goodwill, they have hired almost 50 percent non-Indians from the local communities. So they have also added to the salaries and the work force and the tax base of the local communities.

I think probably even a more subtle benefit is that the years of distrust and prejudice—I have seen a terrific breakdown in that distrust and prejudice in that community.

As you know, living around an Indian community, sometimes people who do not deal with Indians very much, they build suspicions based on the thought that Indians are getting something they don't get, or all kinds of different fairy tales, and it is simply not true.

I have noticed a rapid change in attitude in the people who live in the area of southwest Colorado who previously had very little to do with tribal groups. They spend a good deal of time, many of them do, in that casino. Through active participation in that form

of recreation, there has been a new understanding, I believe, of Indian people.

Some people, of course, are worried about their traditional values, that there may be some erosion. I guess only time will tell that. If somebody can earn \$15 an hour working in a casino, they may not want to do some of the old cultural crafts. I don't know. Maybe the tribal unit can tell you about that.

But I do want to tell you as a member of the other body, that I look forward to working with you to try to make sure we address States' rights, yet at the same time make sure that these words "revision" and "clarification" don't just become other code words for broken promises, as so many have been in the past.

Thank you.

Mr. RICHARDSON. Thank you, Senator Campbell.

We understand you have a tight schedule, too.

We thank you for being here.

[Prepared statement of Senator Campbell follows:]

BEN NIGHTHORSE CAMPBELL
COLORADO

United States Senate

WASHINGTON DC 20510-0605

STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL
BEFORE THE HOUSE SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
ON INDIAN GAMING
APRIL 2, 1993

Thank you Mr. Chairman, it is a pleasure to be here this morning. As a former member of the Committee on Interior and Insular Affairs, now the Committee on Natural Resources, I would like to thank you for allowing me to offer a few brief remarks.

It has been nearly five years since Congress passed the Indian Gaming Regulatory Act. After much debate and compromise a bill was developed that would provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government, while maintaining the sovereignty of Indian tribes and states alike.

The Act categorized gaming into three broad categories; class I, class II, and class III and further outlined a regulatory scheme that apportioned regulating authority between the federal, state, and tribal governments. Class I gaming is to regulated by Indian tribes, class II gaming is to regulated by the Indian tribal governments and the National Indian Gaming Commission, and Class III can be conducted only after an appropriate Tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

The Act also asserted State's must negotiate in "good faith" with Indian tribes seeking to develop class III gaming operations. It was the intent of Congress that, yes, States have a role in the regulation on Class III gaming, and further, it should be the responsibility of the individual tribes and states to come to mutually agreeable terms. The Act did not, however, suggest that states would be completely exempt from negotiating with Indian tribes.

Since the implementation of the Act, approximately 67 class III Tribal-State gaming compacts have been negotiated in 18 states. As we have witnessed in the past year, many states have been reluctant to negotiate class III gaming compacts and have made every effort to avoid coming to the bargaining table. As a result many Indian tribes have been left with virtually no relief to fully participate in the gaming process and have looked to the courts as an only alternative.

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For what reasons negotiations have broken down, I can only speculate. However, I think it is imperative that state governments and Indian tribes continue to work together to resolve their problems.

As you know, during the 100th Congress I was a co-sponsor of H.R. 2507, legislation introduced by the late Mo Udall, then Chairman of the Committee on Interior and Insular Affairs. I strongly believe in tribal self-determination and the inherent sovereignty of Indian tribes. Further, they possess the autonomy to regulate and monitor all activities on their lands.

Tribal governments, for many years, have asserted their inherent right to govern themselves. Many tribes have been profoundly successful in economic development projects they have engaged in and further since the implementation of the Act many tribes have prospered enormously in their gaming projects. Not only have tribal members and Indian communities benefitted from gaming revenues, but surrounding non-Indian communities have also benefitted. Employment opportunities are more abundant, local businesses prosper from increased traffic through their towns and cities.

The most comprehensive study that I am aware of was recently conducted by the Minnesota Indian Gaming Association. The picture is very clear and demonstrates the positive impact that the Indian gaming facilities have on the local and state economies in the state of Minnesota.

In my home state of Colorado, the two Ute tribes have successfully negotiated class III gaming compacts with the state. While the Souther Ute tribe is still in the planning phase of their gaming operations, the Ute Mountain Ute tribe has been very successful in their gaming operations. In addition to their gaming operations they also own and operate a highly successful construction business and farm and ranch enterprise.

Indian tribes see gaming a way to achieve self-sufficiency and to further develop their resources to provide other viable economic opportunity. I think if this kind of positive information can be presented, states may have second thoughts of curtailing successful gaming operation.

It is clear, that a resolution to the growing discontent between the tribal governments and states will need to be addressed. As a member of the Committee on Indian Affairs I look forward to working closely with tribal leaders and state government leaders to seek a positive solution.

Mr. RICHARDSON. Governor Finney, we thank you for being here. We know you have had a successful experiment and we want to hear about it.

STATEMENT OF HON. JOAN FINNEY

Governor FINNEY. Mr. Chairman and members of the committee, four months after my inauguration as the 42nd governor of Kansas, I issued a proclamation setting policy for my administration.

I affirmed the desire of the State of Kansas to promote the goals of Indian sovereignty, self-sufficiency and economic development.

I affirmed the sovereignty of the Indian Nations of Kansas: The Woodland peoples of the Iowa Nation, the Kickapoo Nation, the Prairie Band Potawatomi Nation and the Sac and Fox Nation.

The bottom line is economic opportunity and economic security.

To survive with dignity, to thrive, to preserve traditional heritage, culture, and the family, Native American people—and all people—must have real opportunities to achieve economic security.

Together with the Native American people of all four Kansas Nations, I have negotiated compacts enabling them to pursue Indian Nations' rights to establish Class III gaming in tribally owned casinos on their reservations. We have been challenged in Federal court, and more court action is threatened by those who would deny Native Americans their rights under IGRA.

A profound principle which underlies the centralized Federal authority over Indian affairs is recognition by the United States Supreme Court—held as early as 1886—that many States have traditionally been hostile to tribal interests.

Regrettably, today in Kansas and other States, some political officials and State courts persist in creating obstacle after obstacle to implementation of Indian gaming.

But the Indian Gaming Regulatory Act was born in 1988 out of five long years of extensive deliberations in Congress to balance States' interests and rights, the demands of the existing gaming industry, and Indian peoples sovereignty and rights of self-determination.

Over five years and 14 bills, all aspects of the issue were thoroughly considered. Congress specifically rejected the many proposals of States and other interests to make Indian gaming fully subject to State law.

I remain optimistic that landmark rulings of the U.S. Supreme Court will prevail, and that unenlightened State officials will ultimately be blocked from utilizing State powers to defeat or impair Federal law and rights secured by the Constitution of the United States.

The Indian Gaming Act is an important element of federal policy that is aimed at strengthening sovereignty, tribal government and tribal independence.

To lose this Act and its opportunities turns federal policy into retreat on that long trail that broke down tribal relationships and governments, assimilated Indian people, sold land holdings and whole heritages.

Throughout the Nation we have seen retreat to this trail as recently as the 1950s and 1960s. It cannot be revisited in the 1990s.

Federal policy since 1968 has at least focused on sustaining Indian peoples' rights with the Indian Civil Rights Act; the Indian Self-Determination and Education Act; and the Indian Child Welfare Act.

The last, the Indian Gaming Regulatory Act of 1988, finally spoke to real economic choice and independence.

It is perhaps among the best tools available to free people to determine the future for themselves. To lose it, could turn Federal policy backwards, eroding so many hard-fought gains.

It is no secret. Indian gaming is under direct assault in Washington from special interests and others.

In every forum available, we who support the Native American peoples must seize the opportunity to translate gaming debates into discussions of economic security that create real chances for renewal—for cultural preservation, for strengthening families, for hope and dignity.

Public officials must be accountable for delivering the gaming compacts and economic opportunities to which American Indian people are entitled. Retreat is not an option.

I am committed to defending the sovereignty, the rights of self-determination and economic opportunity Indian gaming will provide for all Kansas Native American peoples.

Other States are beginning to document the positive impact gaming has created for Native Americans. States struggling to create jobs, and to care for growing numbers of disadvantaged people, have a real stake in supporting Native American people developing gaming opportunities.

In Minnesota, 13 Indian gaming operations employ some 5,700 people. Employment projections estimate 8,000 jobs will be created in 1993.

Twenty-four percent of the jobs are held by Indian people and 50 percent are full-time. Unemployment is down in these areas, as well as general assistance welfare liabilities, and Aid to Families with Dependent Children.

Earnings are being reinvested in new roads, schools, tribal scholarships for college, health insurance and new medical facilities, land reacquisition and direct trust fund payments to youth and families who have bought homes and started small businesses.

But these numbers are understated because you cannot truly measure the sense of renewal and pride that is a by-product of economic self-sufficiency.

How can one ever measure what it means for the head of a family to recapture a sense of dignity that comes with a job and a paycheck?

Gaming is a far better solution than operating hazardous waste dumps—both for the health and welfare of all citizens, and for the preservation of invaluable land and water resources.

Gaming is a far better choice than illiteracy, unemployment, poverty and, finally, a world so filled with despair that one out of six Native American teenagers has attempted suicide, a rate four times higher than the rate for all teenagers.

More than one-third of the Native American teenagers surveyed also said they worry a lot about the economic survival of their families.

Economic opportunity and independence can go a long way in creating jobs, in creating hope and strengthening families and Native American communities.

It is happening in Minnesota. The Minnesota experience must be replicated in other States where the study documented the struggles Native American families and children are enduring.

Where more than 10,000 Native Americans had at the beginning of the Civil War made their homes in Kansas, by 1875 fewer than 1,000 Native Americans remained, as they were systematically removed. But as Governor of Kansas, I remain firm in my resolve to care for and enhance the quality of life for "all" people in Kansas regardless of their numbers. I will continue to support Native American people in holding governmental officials accountable for delivering on the opportunities provided under the Indian Gaming Regulatory Act.

It is my hope that the history of the 1990s records an end to the policies and actions that have undermined Native American peoples' sovereignty, dignity and right of self-determination.

As we rush to the doorstep of the twenty-first century, States must work to close a long and tragic chapter in American history. It is time for leadership to rise above the level of common expectation to bring about one of those surprising reversals that fill human history with hope. Together, we must begin to experience new successes that enable us to leave something of real substance in trust for the next generation.

I thank you, Mr. Chairman.

[Prepared statement of Governor Finney follows:]

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TESTIMONY OF KANSAS GOV. JOAN FINNEY
 TO THE SUBCOMMITTEE
 ON NATIVE AMERICAN AFFAIRS
 OF THE COMMITTEE ON
 NATURAL RESOURCES
 U.S. HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C.
 APRIL 2, 1993

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A profound principle which underlies the centralized federal authority over Indian affairs is recognition by the United States Supreme Court -- held as early as 1886 -- that many states have traditionally been hostile to tribal interests.

Regrettably, today in Kansas and other states, some political officials and state courts persist in creating obstacle after obstacle to implementation of Indian gaming.

But the Indian Gaming Regulatory Act was born in 1988 out of five long years of extensive deliberations in Congress to balance states' interests and rights, the demands of the existing gaming industry, and Indian people's sovereignty and rights to self determination.

Over five years and 14 bills, all aspects of the issue were thoroughly considered. Congress specifically rejected the many proposals of states and other interests to make Indian gaming fully subject to state law.

I remain optimistic that landmark rulings of the U.S. Supreme Court will prevail, and that unenlightened state officials will ultimately be blocked from utilizing state powers to defeat or impair federal law and rights secured by the Constitution of the United States.

It is important that this committee and Congress make a stand supporting delivery of opportunities promised under the federal Indian Gaming Regulatory Act.

The Indian Gaming Act is an important element of federal policy that is aimed at strengthening sovereignty, tribal government and tribal independence.

To lose this act and its opportunities turns federal policy into retreat on that long trail that broke down tribal relationships and governments, assimilated Indian people, sold land holdings and whole heritages.

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Twenty-four percent of the jobs are held by Indian people and 50 percent are full-time. Unemployment is down in these areas, as well as general assistance welfare liabilities, and Aid to Families with Dependent Children.

Indian gaming operations are paying \$78 million in wages annually and there has been almost \$69 million in new construction in Minnesota with \$27 million more scheduled.

Indian gaming operations in Minnesota are pulling some 360,000 people from out-of-state to spend money in Minnesota. They are purchasing \$40 million in supplies in Minnesota.

Earnings are being reinvested in new roads, schools, tribal scholarships for college, health insurance and new medical facilities, land reacquisition and direct trust fund payments to youth and families who have brought homes and started small businesses.

Communities, and the state of Minnesota as a whole, are benefitting. These are some of the earliest numbers reported.

But these numbers are understated, because you cannot truly measure the sense of renewal and pride that is a byproduct of economic self-sufficiency.

How can one ever measure what it means for the head of a family to recapture a sense of dignity that comes with a job and a paycheck?

Gaming is a far better solution than operating hazardous waste dumps -- both for the health and welfare of all citizens, and for the preservation of invaluable land and water resources.

Gaming is a far better choice than illiteracy, unemployment, poverty and finally -- a world so filled with despair -- that one out of six Native American teenagers has attempted suicide, a rate four times higher than the rate for all teenagers.

A University of Minnesota study finds that far more Native American youths have experienced the death of one or both parents and a much higher percentage knows someone who has committed suicide as a means of dealing with the hopelessness that persists in their lives.

More than one-third of the Native American teenagers surveyed also said they worry a lot about the economic survival of their families.

Economic opportunity and independence can go a long way in creating jobs, in creating hope and in strengthening families and Native American communities.

It is happening in Minnesota. The Minnesota experience must be replicated in other states where the study documented the struggles Native American families and children are enduring.

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But as Governor of Kansas, I remain firm in my resolve to care for, and enhance the quality of life for, ALL people in Kansas regardless of their numbers.

I will continue to support Native American people in holding governmental officials accountable for delivering on the opportunities provided under the Indian Gaming Regulatory Act.

States, in partnership with their Native American people, must provide the leadership that finally puts an end to a history of broken promises and economic demise.

It is my hope that the history of the 1990s records an end to the policies and actions that have undermined Native American peoples' sovereignty, dignity and right to self determination.

As we rush to the doorstep of the 21st century, States must work to close a long and tragic chapter in American history. It is time for leadership to rise above the level of common expectation to bring about one of those surprising reversals that fill human history with hope.

Together, we must begin to experience new successes that enable us to leave something of real substance in trust for the next generation.

Mr. RICHARDSON. Thank you, Governor.

Do any of my colleagues have any questions for Governor Finney?

Thank you very much, Governor.

We appreciate your coming.

PANEL CONSISTING OF HON. JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA; HON. ESTEBAN E. TORRES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. PETER HOAGLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA; HON. ED PASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA; AND HON. RONALD K. MACHTLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. RICHARDSON. Our next panel, a congressional panel, the Honorable Jim Oberstar, U.S. Representative from Minnesota, Eighth District; Honorable Esteban Torres, U.S. Representative, 34th District of California; Honorable Peter Hoagland, U.S. Representative, Second District of Nebraska; Honorable Ed Pastor, U.S. Representative, Second District, Arizona.

Fellow colleagues, welcome. We apologize for the delay.

We would like to proceed in the same fashion that we have had for all our witnesses.

If you could summarize in five minutes.

The Chair will absent himself for a few moments and ask the gentlelady from Arizona to chair the hearing.

Representative Oberstar, please proceed.

Welcome.

STATEMENT OF HON. JAMES OBERSTAR

Mr. OBERSTAR. Thank you, Mr. Chairman.

Thank you for holding these hearings on this very important subject.

It is timely to air these issues and set forth the facts for Congress and for the public.

Over 157 years ago, U.S. Supreme Court Justice John Marshall wrote: "The relationship between its American Indian peoples and the United States is unlike any other relationship in the world." That statement was true in Marshall's time and it is true today.

The treaties negotiated by the United States Government with the Indian tribes almost 140 years ago promised that in return for the loss of their land the United States would compensate the tribes for that land and enable them to provide for their people and for their community's needs into the future. In the words of the treaties, "the promises were to endure as long as rivers flow."

The Indian people have looked to those treaties, and to the federal courts and to the U.S. Congress to enforce the rights set forth in the treaties.

It is the Congress, not the other body, under the Constitution, that has the unique responsibility. The Congress shall have the power, Section VIII, to regulate commerce with foreign nations among the States and with the Indian tribes. That is Congress, not the BIA, not the Department of the Interior, not the President, not

the States. The Congress is the trustee of the Federal Government's relationship with the Indian peoples. Congress has only delegated certain responsibilities to other agencies of government to carry them out.

It was in my first year in the House that the Congress passed the Indian Self-Determination Act of 1975, making it clear that the policy of the United States Government is cooperation and support, not termination, severance or reduction of the federal relationship with the Indian peoples. That is what Indian gaming is all about—cooperating, supporting, encouraging initiatives taken by Indian peoples toward economic stability and self-determination.

Self-determination, my colleagues, has proven to be another one of the empty promises. Over time I have watched as the peoples of the several reservations in my district who have tried, one after another, economic initiatives toward self-determination and come up short.

They thought they were succeeding with wild rice, Minnesota black gold it was called, until the California wild rice paddies came in and commercial rice swamped the market, drove the price down and put many of them out of business.

They tried maple syrup but it is only a seasonal operation. They tried harvesting the rich reserves of saw timber on the reservations, but one after another, the expert who developed the skills and enticed people, was enticed away and left.

They have tried manufacturing wood stoves, and the initiatives in the Carter years were proven to be beneficial, until a few years later the bottom fell out of the wood stove market.

They have tried high-tech printed circuit boards with firms that were contracting with the Defense Department. The 8-A status, small business, minority enterprise status, helped them for a time, but those were competitive contracts and the Defense requirements kept changing. It was up one year and down the next. You could not keep the skilled people long enough to sustain the enterprise, and the circle of poverty continued to widen.

Then along came Indian gaming. They said: We have tried everything else and it all failed, let's try this. Bingo works for the Catholics on Friday and Saturday nights and maybe gaming will work for the Indians, and it did.

We have created 9,975 new jobs for Minnesota, not just Indians in Minnesota but for non-Indians as well. Nearly three-fourths of those jobs are held by non-Indians and that reflects the cooperative spirit among the people on the reservations with the non-Indian population of our State.

A report just two years ago by the Minnesota Department of Trade and Economic Development shows tribal gaming as the seventh largest corporate employer in the State of Minnesota. Total direct and indirect employment from gaming in the State of Minnesota is now approaching 20,000 jobs, full-time jobs; jobs that pay real incomes, pay real taxes, pay real taxes into social security.

On the reservations, the result of those jobs has been that the number of AFDC recipients has decreased 14 percent, and unemployment has dropped precipitously.

On one reservation, Mille Lacs, we have gone from a 45 percent unemployment rate to zero. Everyone who wants a job on the Mille Lacs Reservation has a job or can have a job.

They are finally beginning to achieve a measure of self-reliance and economic independence. And I want to take a moment to review what has happened on the Mille Lacs Reservation.

Under the leadership of Marge Anderson, who is the chief executive of the reservation, they have set up a program of investment of the proceeds from the gaming operation. They have created five priority areas for investment: infrastructure, housing, health care, education, and economic development and diversification.

The Band has already invested nearly \$600,000 to build a new water tower and water treatment plant; \$1.4 million for a wastewater treatment facility; \$400,000 for a new cultural ceremonial center; \$1.9 million for a health clinic; \$3.3 million for a high school. And if you could see the school that is there on the reservation now, you would just shake your head. How could any learning take place? They are building a new one.

For an elementary school, \$2.5 million and \$300,000 for a day-care center, which the chairman of the full committee, George Miller, visited last fall and was very impressed with.

The Band issued \$15 million in tax-exempt bonds to finance those operations. They never would have been able to do that without the dedicated revenue stream that comes from the gaming operations on the reservation. Never.

Over a third of the monthly income from casino revenues goes to a long-term savings and investment fund. In addition to paying off the cost of bonds that I just referred to, a long-term savings and investment fund to assure the future of the Mille Lacs children has been established. A quarter of casino revenue are being used to reacquire some of the land that had previously been held by the reservation and over time was traded away. And a very substantial amount of money is being invested to assure a long-term, 10-year economic development plan for a self-sustaining economy on the reservation, with investment in manufacturing, retail business, housing, agricultural business and financial services.

The casino impact for Mille Lacs alone has been \$33 million in annual wages and salaries; 2,428 total employees; \$2.3 million paid in federal taxes; \$526,000 plus paid in compensation; \$4.2 million in building permits alone.

I think that Indian gaming needs to be cautious, not to overexpand, not to overdevelop, not to do too much, proceed carefully so they don't dry up the market and become self-defeating. But clearly Indian gaming has been a benefit, an enormous economic benefit to the people, to the State, to the Federal Government.

I have heard it for years from non-Indians, "we are paying all this money out, and we are subsidizing housing and health care, and things keep getting worse." I sat on the Budget Committee. We had vicious battles where people in the eastern part of the United States wanted to take money away from Indian programs. And I said to one of my colleagues, Come out to any one of the reservations in my district and bring some of the folks from your ghetto. They will think that they have really seen misery.

You can't have it both ways. You can't say have self-determination but don't do this, don't use gaming, don't do this activity. It is one that has succeeded.

The Chippewa people love their heritage. They know their battle for survival must be won not only in the courts and the halls of Congress but in the balance sheets of the reservation and in the bank deposits of the people. Indian gaming is the beginning of a long journey towards self-sufficiency that will include a lot of difficulties that you are now hearing today.

But even with the help of gaming, the Minnesota Chippewa tribe must work to overcome, ceaselessly to overcome, 200 years of abject poverty. It was in the late 1880s when unscrupulous men exploited the Dawes Act and went around the country buying up land that was held in common by the Indian people.

The great Chief Seattle said at a hearing of the United States Senate, "How can you buy the land or own the sky? They are our brother and sister." You must not permit ever again that the Chippewa heritage, and that of other Native Americans, be traded away for beads and blankets, so that the Chippewa may remain a proud people as long as rivers flow.

[Prepared statement of Mr. Oberstar follows:]

STATEMENT OF THE HONORABLE JAMES L. OBERSTAR
OF MINNESOTA

BEFORE THE HOUSE INTERIOR SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

April 2, 1993

MR. OBERSTAR: MR. CHAIRMAN, Members of the Subcommittee, I am pleased to have the opportunity to appear before this subcommittee to discuss Indian gaming; an issue that is very important for my Congressional District and the future economic development of the Native American community nationwide.

The gaming industry in Minnesota has become a vast and successful enterprise. Indian gaming has reduced poverty and unemployment on and off the Reservations. The proceeds from gaming are being used for purposes consistent with the National Indian Gaming Regulatory Act of 1988. It is imperative that the funds continue to be used wisely in order to improve health care, housing, and education.

According to a February 1993 report issued by the Minnesota Indian Gaming Association, the gaming facilities themselves have created 9,975 new jobs for Minnesotans. The fact that 73 percent of these jobs are held by non-Indians is extremely significant; gaming has become a cooperative partnership between the non-Indian and Indian communities in many areas. Based on a September 1991 report by the Minnesota Department of Trade and Economic Development, tribal gaming would be the seventh largest corporate employer in the State of Minnesota. The

gaming industry has had a positive impact on the economic development of the entire state. Jobs have been created in many industries; tourism, hospitality, marketing, advertising, retail and construction industries have benefitted. As a result of Indian gaming, total direct and indirect employment is approaching 20,000 jobs.

Since Indian gaming has become a thriving industry in Minnesota, the number of AFDC recipients on the reservations has decreased 14 percent. Unemployment within the Mille Lacs Band of Chippewa Indians has been reduced from 45 percent to effectively zero percent; there are employment opportunities for any Native American who wants a job. Many Americans talk about getting Indians "off of the federal payroll," and when economic independence finally begins to become a reality, many of these same Americans begin talking about the unfair advantages of the Native community. I have seen the deplorable conditions which exist in reservation housing, schools, roads, and hospitals; it is absurd to believe that the reservations could have an unfair advantage.

In my Congressional District, there are several outstanding examples of the positive impacts of Indian gaming on the reservations In Minnesota. One in particular, is the accomplishments of the Mille Lacs Band of Ojibwe Indians and their Chief Executive, Marge Anderson. The grand opening of Grand Casino Mille Lacs was on April 2, 1991; Native American citizens now have jobs, self-respect, and an opportunity for economic self-sufficiency. At Mille Lacs, casino profits are utilized

for five specific purposes, improving infrastructure, housing, health care, education, and economic development and diversification. To date, the Band has invested:

- nearly \$600,000 for a new water tower and water treatment plant
- \$1.4 million for a waste water treatment facility
- \$400,000 for a new ceremonial building
- \$1.9 million for a Central Clinic
- \$3.3 million for an high school on the reservation
- \$2.5 million for an elementary school on the reservation
- \$300,000 for a new DayCare Center

To finance these monumental improvements, the Band issued \$15 million in tax exempt bonds, which are paid by part of the Band's monthly casino revenues. Even though Indian tribes have had the legal capacity to issue tax exempt bonds since 1982 through the Tribal Tax Status Act, the Mille Lacs Band was the first Indian tribe in the entire United States to utilize that Act to finance improvements on a reservation. In absence of Indian gaming, the Band would have lacked a stream of income from which they could service the debt.

Only part of the casino's revenues are used to pay for the bond issues, over a third of the monthly income goes to a long-term savings and investment fund to assure the future for the Mille Lacs children, and over a quarter of casino revenues are being used to reacquire some of the land which was previously owned by the Reservation. And possibly most importantly, the Band is utilizing the money to diversify the

economy to ensure a self-sufficient and sustainable economy for the future. The Band has a tentative ten-year economic development plan, which includes investment in five key area including manufacturing, retail businesses, housing, agribusiness, and a financial services firm.

And those revenues are not just benefitting the Indian tribe, Mr. Chairman, they are benefitting the entire community and State of Minnesota.

The two casinos which are operated by the Mille Lacs Band of Ojibwe will have an estimated 1993 impact of:

- \$33.5 million in annual salaries and wages
- 2,428 total employees
- \$2.3 million in federal taxes paid
- \$526,711 paid in unemployment compensation
- \$4.2 million in new building permits

The entire gaming industry needs to be cautious, saturation of the market is a possibility. The federal government needs to protect and promote the burgeoning industry, but by no means should the exclusive right of Class III gaming be taken away from Native Americans. Along with Indian leaders in Minnesota and across our nation, I am interested in fostering healthy relationships between Indians and non-Indians and in promoting mutually beneficial gaming-related industries. Economic development of the Indian community is the key to self-sufficiency and independence.

Mr. Chairman, this concludes my testimony, and thank you once again for the opportunity to explain the enormous benefits of Indian gaming to the Indian and non-Indian community alike. Partnerships are being built as economic development throughout Minnesota continues, please do not inhibit this growth. I also ask for the opportunity to submit additional testimony for the record. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.
 Ms. ENGLISH. Thank you.
 Congressman Torres.

STATEMENT OF HON. ESTEBAN E. TORRES

Mr. TORRES. Thank you, Madam Chair, Members of the committee.

Thank you very much for holding this hearing today. It means a great deal to Native Americans that you are willing to spend your time investigating the issues surrounding Indian gaming.

I must deviate somewhat from my prepared text at this time to commend my colleague, Mr. Oberstar, for a most impressive testimony on behalf of the Indian nation in his State and the issues he addressed himself to.

If I may, I would like to quote from the Indian Gaming Regulatory Act of 1988, and I quote, "To provide a statutory basis for the operations of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."

We have heard in Mr. Oberstar's testimony a salient example of succinctly what this law attempts to do. As you may know, I have introduced legislation, H.R. 1028, that is a corrective amendment to the Indian Gaming Regulatory Act of 1988. We know it as IGRA around here.

My amendment is needed to overcome recent and widespread efforts by States to thwart fundamental protective safeguards which Congress provided when it enacted the IGRA.

IGRA specifies that tribes can obtain vital employment and other benefits through the establishment of class III gaming. Without class III gaming, tribes are completely government dependent.

Until the Indian Gaming Regulatory Act, tribes and State governments are directed to enter into compacts. If there are disagreements between the tribes and the States, the law establishes procedures for mediation or allows the federal courts to get involved if the States refuse to participate altogether.

Unfortunately, in spite of this federal law, the States are not dealing fairly with the tribes. The States are invoking technical objections to federal enforcement based on the Tenth and Eleventh Amendments to the Constitution. These defenses have resulted in lengthy and expensive legal conflicts, to the extreme detriment of tribal economies and in direct violation of congressional intent.

Accordingly, I have introduced H.R. 1028, which provides a State to agree to submit to the jurisdiction of the federal court, or the class III process will proceed without the State's involvement by way of regulation through the Indian Gaming Regulatory Commission.

Madam Chair, I would like to submit for the record a recent article from *The New York Times* which demonstrates the success of Indian gaming, and I ask unanimous consent to do so.

Ms. ENGLISH. Without objection.

[The information follows:]

With Casino Profits, Indian Tribes Thrive

By FRANCIS X. CLINES

Special to The New York Times

LEDYARD, Conn. — With such adaptations as "wampum" credit cards and waitresses in skimpy maiden tunics, casino gambling on Indian reservations has become a multibillion-dollar industry that is fueling a renaissance of American Indian tribal fortunes and culture.

A movement that began tentatively in 1980 with a court fight over a Florida bingo hall has spread to at least 17 states and 52 tribes operating more than 100 casino and large-scale bingo sites. Many more states, including New

York, are negotiating casino agreements.

And amid such progress Indians are turning back from diaspora and going home to depressed reservations after three centuries of decline. They are eager to document their blood lines and get in on the upturn in fortunes.

A Piece of the Pequots' Pie

"They see the success we're having and would like a piece of the pie," said Joseph J. Carter, who turned away from urban American life a decade ago to join his brother, Gary, and scores of others in

reviving the Mashantucket Pequot tribe and creating the 'state of the art' Foxwoods reservation casino here. Both brothers now have important roles in the casino.

The tribe, once down to fewer than a dozen residents on the reservation, now has over 225 returned or rediscovered members, plus a growing list of applicants who insist they are entitled.

Free Tuition and Travel

"I think it's wonderful that people who suffered adversity for centuries around here finally have a chance to get theirs," said Irving Wizenfeld, a visiting gambler sensing a higher cause in his losses, as the adaptive tribe uses its gambling profits to tutor the young about massacre and disease at the hands of colonialist usurpers. "Isn't that what America is supposed to be about?"

Led by its chief and chairman, Richard Hayward, one of the national leaders of the Indian casino movement, the tribe now guarantees college tuition for all its children and world travel for its elders, and it has hired its own archaeologist to disinter lost tribal history.

All this and more, including ho-



Joyce Dopkeen/The New York Times

Continued on Page 42, Column 1

Ageless Culture Shifts With a Roll of the Dice

Continued From Page 1

tels for visitors and home construction for tribe members, are under way because of the booming profits from its modern, woodsy gambling palace that had to go to 24-hour operations to handle the action soon after it opened last February on the 1,800-acre reservation here, a three-hour drive east from New York City.

No less impressive, the tribe has sought another profit line by branching into casino management consulting. They deal with tribal chiefs from across America who are steadily visiting so they can shape their own grand plans for tribal resurrection.

Within the pastel-toned gambling factory, the sounds of the outside forest are lost to the lucrative whirrings of slot machines and roulette wheels and the clipped intensity of high-stakes poker tables where players are free to set their own limits at hundreds of dollars a bet on the Indians' sovereign grounds.

Boon Beyond Reservation

A second casino building is already under construction, and officials plan to triple the current 3,500-member payroll. This boon extends well beyond the reservation, since most workers are not tribe members and are surviving in a troubled economy depressed by the post-Cold War cutbacks in local armaments industries. Casino officials declined to show a balance sheet, but total bets can range from \$500,000 on a slow day to \$3 million on a busy weekend day, with the tribe netting at least a third, in the estimate of one Foxwoods official.

Spurred by successes like Foxwoods, Indian casinos have become a \$6-billion-a-year industry across the country, with steady growth predicted by Indian gambling officials to total at least \$1 billion annually, based on the rush of new casino compacts now in negotiation and under study in Washington. Although Indians control less than 1 percent of the overall American gambling industry, court-tested Federal law gives them far greater power than other casino operators to set up in states where gambling is restricted.

As the Indians pressed for casinos and opposition grew, Congress passed the Indian Gaming Regula-

tory Act of 1988, outlining compacts between states and tribes. The law allows Federally recognized tribes to negotiate casino agreements in any state where casino-style gambling is allowed, even for limited charity purposes. While most states allow such limited forms of gambling, only Nevada and New Jersey permit full-scale casinos outside reservations.

Mohawks and Oneida In Line

Representatives of tribes in New York are among the Indian leaders visiting the casino here; they are trying to negotiate gambling agreements with state officials. Some New York officials estimate that compacts are likely to be reached with the St. Regis Mohawks and Oneida Nation, although this would be only the opening step in a laborious entrepreneurial exercise that, for all its intricacies, is being attempted by dozens of tribes across the country.

"They're getting very inventive out there," said Bob Walker, a spokesman for the Federal Department of the Interior, which oversees the compacts between the states and the tribes under the 1988 law.

"Tribes are marrying up with private gambling interests lately," he said, noting proposals for tribal-sponsored casinos in downtown Detroit and Wichita, Kan., in suburban Chicago and a dozen other places far removed from reservations.

This could be done by ceding city lands in trust to tribal sponsors as reservation sanctuaries, an approach that leaves Federal officials wary. Abetted more and more by commercial gambling specialists from established casino spas like Atlantic City and Las Vegas, the projects even include a proposed casino in Iowa co-sponsored by an out-of-state tribe, the Santee Sioux of Nebraska, and a Nevada resort casino.

America's Grimmiest Past

But the Indians' more certain path is by individual tribal compacts, which most states are mandated by Federal law to negotiate. The Indians' new casinos and high-stakes bingo halls from these compacts have already created tens of thousands of jobs. The most inviting ones are going to their own people, whose families have suffered some of the grimmest experiences of poverty, prejudice and denied opportunities in America.

In Minnesota, for example, 5,000 jobs have been created at a dozen

reservation gambling sites. The Mille Lacs band of Chippewas, which in recent years had an unemployment rate of 45 percent, with major health and alcoholism problems, now reports nearly full employment after a new casino began producing \$15 million in annual revenues and opened a world of community services.

"Gambling has proved vital to us," said Reid A. Walker, a member of the Mandan tribe of North Dakota and an executive of the National Indian Gaming Association, an association spearheading the casino movement for 70 tribes.

"It has brought us great hope. It's a renaissance for Indian country, giving us power to start our own programs in health care, infrastructure, education and more."

But lately, says the association, various states have been resisting harder in state courts and attempting greater regulation as the Indians' potential becomes clear. In Idaho, for example, voters in a referendum last

CONNECTICUT



Photographs by Joyce Lappeen/The New York Times

Casino gambling has become a booming industry for American Indian tribes, financing a renaissance of tribal fortunes and culture. Gamblers rowded into a betting room at the Mashantucket Pequot tribe's highly modern Foxwoods casino on its reservation in Ledyard, Conn.

November favored banning casino-type gambling. A similar referendum is being held on restricting existing Indian casinos in Wisconsin.

Reservations Are Sovereign

But the only way a state can head off Indian casinos is to bar casino-type games totally throughout the state, often a complex constitutional move that risks the opposition of church and other charity groups. The Indians' gambling sovereignty is rooted in the Supreme Court's decision in 1976 that while states may have some civil and criminal jurisdiction over Indian tribes, they do not have regulatory powers.

Here in Connecticut, the Mashantucket Pequots, after having to sue the state earlier to force it into negotiations, dealt cleverly with the threat of competition in recent weeks by offering \$100 million of its annual revenues to the state as community aid. In return, Gov. Lowell P. Weicker Jr., who has resisted casino gambling

beyond the reservations, gave the Indians permission to use slot machines and thus apparently defused growing pressures to extend casino gambling to needy cities.

In theory, the Indians might police their gambling alone, but the Foxwoods chieftains are advising other tribes to cooperate closely with outside authorities, including state police, the Federal Bureau of Investigation and even the Central Intelligence Agency, in guarding against inroads from organized crime.

"We want to know all about the bad guys," said Mr. Carter of Foxwoods. The security here, with workers in green blazers watching quietly and with videotapes recording through mirrored windows, has already led to the arrest of criminal figures attempting a credit-card scam at the casino, Mr. Carter said. He says the Indians' own sense of tribalism is itself a barrier to the underworld.

The tribes stress the far more tangible effects of casino gambling

There is the new power plant, 950-unit housing development, fire, police and court systems, universal employment, health care and education for the once impoverished Cabazon band of Mission Indians in California who established the first reservation casino a decade ago.

Mr. Carter's personal history on the reservation began with a \$5-an-hour job clearing trees for the casino site. Now he does tribal public relations at "somewhere between \$55 and \$80 an hour," he said with a smile.

"You need money to practice sovereignty," was the lesson drawn by Foxwoods' Mr. Carter, wandering his tribe's crowded casino here. He savors the flood of would-be Indians, lately petitioning the chieftains over hoped-for tribal ties, as much as he values the gamblers wielding their wampum cards with that endless hunch that they can be winners. "Hey, everybody wants to be a Mashantucket," Mr. Carter declared, surveying the latest action.

Mr. TORRES. Moreover, I would like to submit for the record an impressive and recent statement by Senator Inouye who invoked the words of our former colleague from Arizona, Representative Mo Udall, reminding us of our special trust responsibilities when deliberating Indian gaming legislation. I would encourage everyone on the committee to review his words.

It astounds me that the same issues are unresolved five years later. Perhaps the tribes are not so astonished, however. They have grown accustomed to the broken promises of the Federal Government.

So I urge this committee and my colleagues in Congress to put an end to the broken promises.

Thank you very much.

[Prepared statement of Mr. Torres and attachments follow:]

STATEMENT OF
CONGRESSMAN ESTEBAN E. TORRES
before the
SUBCOMMITTEE ON INDIAN AFFAIRS
NATURAL RESOURCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

APRIL 2, 1993

Mr. Chairman, members of the Committee, thank you very much for holding this hearing today. It means a great deal to Native Americans that you are willing to spend your time investigating the issues surrounding Indian gaming. If I may, I'd like to quote from the Indian Gaming Regulatory Act of 1988:

"To provide a statutory basis for the operations of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments."

As you may know, I have introduced legislation, H. R. 1028 that is a corrective amendment to the Indian Gaming Regulatory Act of 1988 (IGRA). My amendment is needed to overcome recent and widespread efforts by states to thwart fundamental protective safeguards, which Congress provided when it enacted the IGRA.

IGRA specifies that tribes can obtain vital employment and other benefits through the establishment of Class III gaming. Without Class III gaming, tribes are completely government-dependent.

Under the IGRA tribes and state governments are directed to enter into compacts. If there are disagreements between the tribes and the states the law establishes procedures for mediation, or allows the federal courts to get involved if the states refuse to participate altogether.

Unfortunately, in spite of this federal law, the states are not dealing fairly with the tribes.

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These defenses have resulted in lengthy and expensive legal conflicts, to the extreme detriment of tribal economies, and in direct violation Congressional intent.

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It astounds me that the same issues are unresolved, **five years later!** Perhaps the tribes are not so astonished; they have grown accustomed to the broken promises of the federal government.

I urge you to put an end to the broken promises.

STATEMENT OF SENATOR DANIEL K. INOUE
CHAIRMAN, SENATE COMMITTEE ON INDIAN AFFAIRS
BEFORE THE MARCH 19, 1993 MEETING
WITH REPRESENTATIVES OF INDIAN TRIBAL GOVERNMENTS
ENGAGED IN INDIAN GAMING ACTIVITIES

BEFORE WE BEGIN OUR DISCUSSIONS TODAY, I WOULD LIKE TO TAKE A FEW MOMENTS TO REVIEW THE EVENTS THAT HAVE BROUGHT US HERE TODAY.

AS MOST OF YOU KNOW, THE EFFORT TO DEVELOP A REGULATORY FRAMEWORK FOR THE ADMINISTRATION OF INDIAN GAMING ACTIVITIES BEGAN WELL BEFORE THE SUPREME COURT ISSUED ITS RULING ON FEBRUARY 25, 1987 IN THE NOW FAMOUS CASE OF CALIFORNIA v. CABAZON BAND OF MISSION INDIANS.

AT THE TIME THE COMMITTEE BEGAN ITS WORK IN THE INDIAN GAMING AREA, I WAS NOT THE CHAIRMAN OF THE COMMITTEE -- IN FACT, SOME OF YOU MAY REMEMBER ME AS A RATHER INACTIVE MEMBER OF THE COMMITTEE.

I RECALL SEVERAL CROWDED MARK-UP SESSIONS THAT TOOK PLACE IN 1986, AND I WILL NOT BE LIKELY TO FORGET ALL OF THOSE WHO CAME TO MY OFFICE, SEEKING TO HAVE THEIR RESPECTIVE AGENDAS AND OBJECTIVES INCORPORATED INTO THE BILL.

BUT I WAS NOT THE LEADER OF THE COMMITTEE, AND AS ONE MEMBER, THE ULTIMATE CONTENT OF THE BILL WAS NOT MY CALL TO MAKE. BESIDES, AS MANY OF YOU KNOW, WE HAVE NO GAMING IN THE STATE OF HAWAII. WE CRIMINALLY PROHIBIT EVERY FORM OF GAMING, EVEN BINGO.

I BEGAN MY TENURE AS CHAIRMAN OF THE INDIAN AFFAIRS COMMITTEE IN JANUARY OF 1987, AND IT WAS THEN THAT I BEGAN MY REAL IN-DEPTH EDUCATION IN MATTERS OF INDIAN SOVEREIGNTY; THE HISTORY OF TREATIES AND THE PROVISIONS OF THE CONSTITUTION RELATING TO THE INDIAN NATIONS; THE UNITED STATES TRUST RESPONSIBILITY, AND THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE UNITED STATES AND INDIAN TRIBAL GOVERNMENTS.

MOST OF THE COMMITTEE'S WORK ON INDIAN GAMING IN EARLY 1987 WAS CONDUCTED IN ANTICIPATION OF THE SUPREME COURT'S IMPENDING RULING IN THE CABAZON CASE. AS I RECALL, WHEN I ASSUMED THE CHAIRMANSHIP OF THE COMMITTEE, BOTH THE PROPOSITORS AND OPPOSITORS OF INDIAN GAMING WERE SEEKING EARLY PASSAGE OF LEGISLATION THAT HAD BEEN CONSIDERED IN THE PREVIOUS SESSION OF THE CONGRESS -- BOTH SIDES WANTING TO PROTECT WHAT GROUND THEY FELT THEY HAD WON IN EARLIER NEGOTIATIONS, IN CASE THE SUPREME COURT RULED AGAINST THEIR POSITION.

BUT, AS IT TURNED OUT, THE POLITICS PROVED TOO DIFFICULT -- CONSENSUS WAS FAR FROM BEING ACHIEVED, AND WE ENTERED THE SECOND SESSION OF THE 100TH CONGRESS WITH ALL SIDES FEELING A SENSE OF UNCERTAINTY.

AND THEN, ON FEBRUARY 25, 1987, THE SUPREME COURT ISSUED IT RULING IN CABAZON, AND AS THE OLD EXPRESSION GOES..."ALL HELL BROKE LOSE". THE TRIBES, SECURE IN THEIR VICTORY, WERE FINISHED WITH COMPROMISE. THE OPPOSITORS OF INDIAN GAMING WERE JOINED IN FULL FORCE BY THE STATES WHO PAINTED OMINOUS PICTURES OF IMPENDING DOOM IF THE SUPREME COURT RULING WERE ALLOWED TO STAND.

THE SUPREME COURT HAD SAID:

"WE CONCLUDE THAT THE STATE'S INTEREST IN PREVENTING THE INFILTRATION OF THE TRIBAL BINGO ENTERPRISES BY ORGANIZED CRIME DOES NOT JUSTIFY STATE REGULATION OF THE TRIBAL BINGO ENTERPRISES IN LIGHT OF THE COMPELLING FEDERAL AND TRIBAL INTERESTS SUPPORTING THEM. STATE REGULATION WOULD IMPERMISSIBLY INFRINGE ON TRIBAL GOVERNMENT, AND THIS CONCLUSION APPLIES EQUALLY TO THE COUNTY'S ATTEMPTED REGULATION OF THE CABAZON CARD CLUB."

BECAUSE THE COURT WAS RULING WITHIN THE CONTEXT OF A STATE IN WHICH PUBLIC LAW 83-280 APPLIED, THE SUPREME COURT EXAMINED THE APPEALS COURT'S ANALYSIS OF THE CALIFORNIA STATUTE TO DETERMINE WHETHER IT WAS CRIMINAL AND PROHIBITORY IN NATURE OR CIVIL AND REGULATORY, AND AFFIRMED IT TO BE THE LATTER.

I BELIEVE THAT IT IS IMPORTANT TO RECALL THAT THE FEDERAL INTERESTS THAT THE SUPREME COURT FOUND TO BE PRE-EMPTIVE WERE THOSE OF INDIAN SELF-GOVERNMENT, INCLUDING THE GOAL OF ENCOURAGING TRIBAL SELF-SUFFICIENCY AND ECONOMIC DEVELOPMENT.

IT WAS INTEGRAL TO THE COURT'S FINDINGS THAT THE TRIBAL GAMES PROVIDED THE SOLE SOURCE OF REVENUES FOR THE OPERATIONS OF THE TRIBAL GOVERNMENT AND SERVED AS THE MAJOR SOURCE OF EMPLOYMENT FOR TRIBAL MEMBERS.

THE SEVERAL STATES SOUGHT AN IMMEDIATE RESOLUTION TO WHAT THEY VIEWED AS THE CRISIS IN LAW ENFORCEMENT THAT WOULD FLOW FROM THE COURT'S RULING. THE STATES CALLED UPON THE CONGRESS TO OVERTURN THE SUPREME COURT'S RULING IN CABAZON.

AT THAT TIME, YOU MAY RECALL, WE WERE CONSIDERING A MODEL FOR INDIAN GAMING LEGISLATION THAT WAS CONSISTENT WITH THE TRADITIONAL AND HISTORICAL FEDERAL-TRIBAL RELATIONSHIP. UNDER THAT MODEL, POWERS OF REGULATION AND LAW ENFORCEMENT WOULD HAVE BEEN VESTED IN A FEDERAL COMMISSION.

THE JUSTICE DEPARTMENT HAD OPPOSED THAT FORMULATION, AND NOW THEY WERE JOINED BY THE STATES, WHO NOW WANTED SOME ROLE TO PLAY IN THIS AREA.

IF WE WERE GOING TO ACCOMMODATE THE STATES, WE HAD TO FASHION A COMPREHENSIVE FEDERAL FRAMEWORK THAT WOULD TAKE INTO ACCOUNT THE WIDE VARIATIONS IN THE LAWS OF EACH STATE.

NONETHELESS, IT WAS IMPORTANT TO ME, AS WELL AS TO OTHERS ON THE COMMITTEE, THAT WE NOT JEOPARDIZE THE SOVEREIGNTY OF THE TRIBAL GOVERNMENTS. IF STATES AND TRIBES WERE GOING TO HAVE SOME INTERACTION IN THE AREA OF GAMING, IT HAD TO BE PREMISED ON THE BASIS OF THEIR STATUS AS EQUAL SOVEREIGNS.

AND SO, WHEN THE NOTION OF TRIBAL-STATE COMPACTS WAS PROPOSED, WHEREBY TRIBES AND STATES WOULD SIT DOWN TOGETHER ON A SOVEREIGN-TO-

SOVEREIGN GOVERNMENT BASIS -- THIS APPEARED TO BE A WORKABLE SOLUTION, PARTICULARLY GIVEN THE STRONG OPPOSITION OF THE JUSTICE DEPARTMENT TO A FEDERAL PRESENCE TO WORK WITH TRIBAL GOVERNMENTS IN MATTERS OF LAW ENFORCEMENT AND REGULATION OF INDIAN GAMING.

BUT LET US BE CLEAR ABOUT THIS. EVEN BEFORE THE BILL WAS SIGNED INTO LAW, IT BECAME KNOWN AS THE "NEVADA BILL". MORE SPECIFICALLY, LAS VEGAS INTERESTS WERE BOASTING THAT THEY DESERVED THE CREDIT FOR THE PROVISIONS OF THE INDIAN GAMING REGULATORY ACT.

THE ACT WAS NOT THEN, NOR HAS IT EVER BEEN VIEWED, AS THE BILL THAT THE INDIANS WOULD HAVE WANTED. NOR WAS IT EVER THE COMMITTEE'S BILL. THOSE WHO NOW RUSH TO CHARACTERIZE THE ACT AS SUCH ARE SIMPLY SEEKING TO REVISE HISTORY TO SERVE THEIR OWN ENDS.

BECAUSE I BELIEVE THAT IF WE HAD KNOWN AT THE TIME WE WERE CONSIDERING THE BILL -- IF WE HAD KNOWN THAT THIS PROPOSAL OF TRIBAL-STATE COMPACTS THAT CAME FROM THE STATES AND WAS STRONGLY SUPPORTED BY THE STATES, WOULD LATER BE RENDERED VIRTUALLY MEANINGLESS BY THE ACTION OF THOSE STATES WHICH HAVE SOUGHT TO AVOID ENTERING INTO COMPACTS BY ASSERTING THE 10TH AND 11TH AMENDMENTS TO DEFEAT FEDERAL COURT JURISDICTION, WE WOULD NOT HAVE GONE DOWN THIS PATH.

THE ACT WAS SIGNED INTO LAW ON OCTOBER 17, 1988. NATURALLY, WE ASSUMED THAT THE APPOINTMENT OF THE INDIAN GAMING COMMISSION WOULD FOLLOW SHORTLY THEREAFTER. BUT THE BUSH ADMINISTRATION APPARENTLY

DIDN'T CONSIDER INDIAN GAMING TO BE A VERY HIGH PRIORITY, BECAUSE THE FIRST APPOINTMENT -- THAT OF THE CHAIRMAN OF THE COMMISSION -- WASN'T MADE UNTIL ONE YEAR AND SEVEN MONTHS AFTER THE PASSAGE OF THE ACT, ON MAY 17, 1990.

THE FIRST COMMISSIONER WAS APPOINTED OVER TWO YEARS FOLLOWING ENACTMENT, ON NOVEMBER 26, 1990. AND THE FINAL COMMISSIONER WASN'T APPOINTED UNTIL APRIL 7, 1991 -- A FULL TWO AND A HALF YEARS AFTER THE ACT HAD BEEN SIGNED INTO LAW.

TODAY, 61 TRIBAL GOVERNMENTS HAVE ENTERED INTO COMPACTS WITH STATE GOVERNMENTS IN EIGHTEEN STATES. THOSE COMPACTS VARY DRAMATICALLY IN THE SIZE OF THE GAMING OPERATIONS THEY GOVERN, RANGING FROM THE MASHANTUCKET PEQUOT TRIBE'S IMPRESSIVE SUCCESS TO SOME OF THE SMALLER OPERATIONS IN THE WESTERN STATES. AND YET, DESPITE THE FACT THAT IN EIGHTEEN OUT OF THE 28 RESERVATION STATES, THERE ARE COMPACTS IN PLACE AND GAMING ACTIVITIES ARE BEING CONDUCTED UNDER THE WATCHFUL EYES OF STATE AND TRIBAL AND FEDERAL LAW ENFORCEMENT OFFICERS, THOSE WHO SUPPORTED THE ACT ARE NOW SEEKING TO ELIMINATE IT.

FIVE YEARS LATER, ALTHOUGH EXPRESSED IN DIFFERENT TERMS, THE STATES ARE STILL SEEKING WHAT THEY SOUGHT IN 1988 -- NAMELY, THEY WANT THE CONGRESS TO OVERTURN THE SUPREME COURT'S RULING IN CABAZON -- AND TO REVERSE TWO HUNDRED YEARS OF FEDERAL JURISPRUDENCE WHICH HAS CONSISTENTLY HELD THAT UNLESS CONGRESS EXPRESSLY AUTHORIZES IT, STATE LAWS DO NOT APPLY ON INDIAN LANDS.

THE LINES HAVE BEEN REDRAWN. SOME IN LAS VEGAS WHO ORIGINALLY OPPOSED INDIAN GAMING -- THOSE THAT SOUGHT THE TRIBAL-STATE COMPACT APPROACH -- THOSE THAT LATER ORGANIZED TO CONDUCT A PUBLIC MEDIA CAMPAIGN IN OPPOSITION TO INDIAN GAMING -- SOME OF THOSE INTERESTS NOW SUPPORT INDIAN GAMING BECAUSE THEY ARE INTEGRALLY INVOLVED AND INVESTED IN INDIAN GAMING.

THERE ARE OTHERS WHO OPPOSE INDIAN GAMING FOR OTHER REASONS. THERE ARE THOSE WHO VIEW INDIAN GAMING AS HOLDING THE POTENTIAL TO DRAW FUNDS AWAY FROM STATE-RUN LOTTERIES THAT DIRECTLY BENEFIT STATE COFFERS. THERE ARE THOSE THAT OPPOSE INDIAN GAMING BECAUSE THEY DO NOT WANT THE TRIBES TO HAVE ANY COMPETITIVE ADVANTAGE OVER OTHERS WHO CONDUCT GAMING ACTIVITIES IN THEIR STATES.

THERE ARE THOSE WHO ARE MORALLY OPPOSED TO GAMING. AND THERE ARE THOSE WHO OPPOSE GAMING BECAUSE OF THE CRIMINAL ELEMENTS THEY ASSOCIATE WITH GAMING.

TODAY, INDIAN GAMING REPRESENTS TWO PERCENT OF ALL GAMING ACTIVITIES IN THE UNITED STATES -- OR APPROXIMATELY \$4.7 BILLION DOLLARS IN GROSS REVENUES FROM ALL FORMS OF INDIAN GAMING IN 1991.

THAT COMPARES WITH THE ESTIMATED REVENUES OF JUST ONE STATE -- THE FIRST STATE IN WHICH COMPREHENSIVE GAMING WAS CONDUCTED -- WHERE GROSS REVENUES WERE ESTIMATED AT \$368 MILLION DOLLARS IN THE 1991-1992 PERIOD, AND WHERE ANOTHER \$22 MILLION IS REALIZED BY THE STATE THROUGH A CASINO

ENTERTAINMENT TAX, AND AN ADDITIONAL \$38 MILLION IS REALIZED FROM AN ANNUAL TAX ON SLOT MACHINES.

INCOME TO STATES OTHER THAN NEVADA DERIVED FROM ALL FORMS OF GAMING MAY BE AS HIGH AS \$250 BILLION DOLLARS. A CONSERVATIVE ESTIMATE OF REVENUES DERIVING FROM STATE-RUN LOTTERIES IS \$30 BILLION.

THUS, GAMING IS NOT ONLY BIG BUSINESS IN THE UNITED STATES, BUT WIDESPREAD. THOSE WHO ARE GENERALLY OPPOSED TO GAMING WILL HAVE TO REACH MUCH FURTHER THAN MERELY SEEKING THE ELIMINATION OF INDIAN GAMING.

BECAUSE IF THEY DON'T, THERE WILL BE THOSE WHO WILL PERCEIVE THE EFFORT TO WIPE-OUT INDIAN GAMING AS ONE THAT IS RACIALLY-MOTIVATED. AND I DON'T BELIEVE THAT ANY OF US WANTS TO SEE THE UGLY HEAD OF RACISM BECOME PART OF THIS DEBATE.

THE MOUNTING OPPOSITION TO INDIAN GAMING STEMS IN PART FROM THE RULINGS OF VARIOUS FEDERAL DISTRICT COURTS ACROSS THE COUNTRY -- JUDGES WHO HAVE BEEN CALLED UPON IN ONE CONTEXT OR ANOTHER TO INTERPRET STATE LAW AS IT APPLIES TO THE FEDERAL INDIAN GAMING REGULATORY ACT STATUTE.

ONE OF THE FIRST CASES THAT BECAME A RALLYING CRY FOR THOSE WHO WERE OPPOSED TO INDIAN GAMING, WAS THE DECISION THAT CAME OUT OF THE FEDERAL DISTRICT COURT IN WISCONSIN, INTERPRETING WISCONSIN LAW.

I FEEL COMPELLED TO EMPHASIZE THAT LAST PHRASE, "INTERPRETING WISCONSIN LAW", BECAUSE THE COURT'S FINDING WITH REGARD TO THE MEANING OF THE TERM "LOTTERY" IN WISCONSIN LAW, CANNOT AND SHOULD NOT BE USED TO EQUATE THE LAWS OF WISCONSIN WITH THE LAWS OF OTHER STATES.

OBVIOUSLY, THE LAWS OF EACH STATE ARE UNIQUE AND PECULIAR TO EACH STATE. SOME STATES HAVE ALMOST SURGICALLY CARVED OUT AN EXCEPTION TO A CRIMINAL PROHIBITION ON ALL CLASS III GAMING WHEN THEY DECIDE TO AUTHORIZE A STATE-RUN LOTTERY. OTHER STATES MAY HAVE AMENDED STATE LAW OR STATE CONSTITUTIONS ON A GAME-BY-GAME BASIS.

THERE IS ONLY ONE STATE THAT I KNOW OF -- MY HOME STATE -- THAT CRIMINALLY PROHIBITS ALL FORMS OF GAMING. SO I DON'T WORRY WHEN I HEAR ABOUT A FEDERAL COURT'S INTERPRETATION OF ANOTHER STATE'S LAW.

AND, WHILE I RECOGNIZE THAT HAWAII MAY BE THE EXCEPTION, I WOULD STILL EXPECT THAT THE LAWYERS IN OTHER STATES WOULD LOOK TO THE LAWS IN THEIR RESPECTIVE STATES, BEFORE RUSHING TO JUDGMENT AS TO WHAT THE WISCONSIN COURT'S RULING MAY MEAN FOR THEIR STATE.

MORE RECENTLY, ON FEBRUARY 15TH OF THIS YEAR, A MEDIATOR IN ARIZONA ANNOUNCED HIS CHOICE OF COMPACTS OFFERED BY ARIZONA TRIBES AND THE STATE OF ARIZONA. BY HIS OWN ACKNOWLEDGMENT, THE STATEMENT WHICH ACCOMPANIED THE MEDIATOR'S ELECTION OF COMPACTS WAS NOT NECESSARY. NONETHELESS, SOME HAVE ACCORDED THAT STATEMENT THE WEIGHT OF A COURT RULING.

FOLLOWING THE MEDIATOR'S ELECTION OF COMPACTS, STATEMENTS ATTRIBUTED TO INTERIOR SECRETARY BABBITT APPARENTLY ADDED FUEL TO THE FIRESTORM OF CONTROVERSY THAT HAD BEEN STIRRED UP IN THE WAKE OF THE MEDIATOR'S ACTION, AND WE'VE BEEN TOLD THAT THE GOVERNORS OF THE SEVERAL STATES UNDERTOOK A CAMPAIGN OF PHONE CALLS TO THE WHITE HOUSE TO REGISTER THEIR PROTESTS.

THEN, ON MARCH 5TH, TWO MORE RULINGS OF FEDERAL DISTRICT COURTS WERE ANNOUNCED. ONE, IN THE STATE OF RHODE ISLAND, HELD THAT THE INDIAN GAMING REGULATORY ACT PRE-EMPTED THE PROVISIONS OF THE RHODE ISLAND INDIAN LANDS CLAIMS SETTLEMENT ACT.

IN THIS MATTER, I HAVE TO TAKE EXCEPTION TO THE COURT'S FINDING, BECAUSE IT WAS CLEAR TO US AT THE TIME THE SENATE WAS CONSIDERING THE GAMING ACT -- WE SAID SO IN THE SENATE COMMITTEE REPORT ACCOMPANYING THE GAMING ACT AND A COLLOQUY BETWEEN MYSELF AND SENATORS CHAFEE AND PELL - THAT THE CIVIL, CRIMINAL, AND CIVIL REGULATORY LAWS OF THE STATE OF RHODE ISLAND WOULD APPLY TO TRIBAL LANDS.

OUR STATEMENTS REFLECTED AN EARLIER MEMORANDUM OF AGREEMENT ENTERED INTO BY THE NARRAGANSETT TRIBE AND THE STATE OF RHODE ISLAND WHICH SERVED AS THE BASIS FOR THE TRIBE'S SETTLEMENT ACT. THESE WERE NOT CONDITIONS UNILATERALLY IMPOSED ON THE TRIBE BY THE CONGRESS.

THE SECOND ANNOUNCEMENT OF A RULING ON MARCH 5TH, IN CALIFORNIA, WAS MADE FROM THE BENCH, SO WE DON'T HAVE A WRITTEN OPINION TO INFORM

OUR JUDGMENT AS TO HOW THE COURT'S RULING MAY OR MAY NOT AFFECT FUTURE CASES. HOWEVER, AGAIN I FEEL COMPELLED TO MAKE THE SIMPLE OBSERVATION THAT THE COURT MUST HAVE BEEN EXAMINING THE APPLICATION OF THE INDIAN GAMING REGULATORY ACT WITHIN THE CONTEXT OF CALIFORNIA LAW.

NONETHELESS, A RENEWED ROUND OF CALLS APPARENTLY CAME INTO THE WHITE HOUSE, STRONGLY URGING THAT THE WHITE HOUSE TAKE IMMEDIATE ACTION TO RESOLVE WHAT IS NOW BEING REFERRED TO AS "THE INDIAN GAMING PROBLEM".

LAST WEEK, SECRETARY BABBITT MET WITH SOME OF THE GOVERNORS, AND LATER, WITH SOME OF THE TRIBES INVOLVED IN GAMING. HE WAS SEEKING, I THINK, TO BRING PEOPLE TOGETHER SO THAT HE MIGHT MORE FULLY UNDERSTAND THEIR CONCERNS.

I COMMEND THE SECRETARY FOR HIS EFFORTS. I THINK HE WAS HEADED IN THE RIGHT DIRECTION. I THINK THAT ALL OF THOSE WHO ARE INVOLVED IN INDIAN GAMING -- WE IN THE FEDERAL GOVERNMENT, THE GOVERNORS AND THE ATTORNEYS GENERAL AND THE STATE LEGISLATORS, AND THE TRIBAL GOVERNMENTS -- NEED TO BE TALKING TO ONE ANOTHER.

I SAY THIS, NOT ONLY BECAUSE I BELIEVE IT, BUT BECAUSE IN THE ABSENCE OF SUCH COMMUNICATION, THERE IS AN ORGANIZED EFFORT COMING OUT WITH THE FOLLOWING PROPOSALS:

- A MORATORIUM ON ALL CLASS III GAMING ON INDIAN LANDS;
- REPLACING THE STATES WITH A FEDERAL PRESENCE IN THE AREA OF INDIAN GAMING;

- A TWO-YEAR RESTRICTION ON THE SECRETARY'S AUTHORITY TO APPROVE TRIBAL-STATE COMPACTS;
- A REPEAL OF THE INDIAN GAMING REGULATORY ACT;
- A GAME-SPECIFIC RESTRICTION ON WHAT CAN BE CONSIDERED IN NEGOTIATIONS THAT WOULD LEAD TO A TRIBAL-STATE COMPACT;
- A CLARIFICATION OF WHAT CONSTITUTES "GOOD FAITH" OR "BAD FAITH" ON THE PART OF A STATE;
- AN ALTERNATIVE PROCESS FOR ENTERING INTO FEDERAL-TRIBAL COMPACTS WHEN A STATE ASSERTS THE TENTH OR ELEVENTH AMENDMENT TO DEFEAT FEDERAL COURT JURISDICTION IN AN ACTION BROUGHT BY A TRIBAL GOVERNMENT SEEKING THE NEGOTIATION OF A TRIBAL-STATE COMPACT;
- A CLARIFICATION OF WHAT THE TERM "CONCUR" MEANS IN THE CONTEXT OF THE REQUIREMENT THAT A GOVERNOR MUST CONCUR IN THE SECRETARY'S DECISION TO TAKE LAND INTO TRUST FOR GAMING PURPOSES;
- A PROCESS TO PROVIDE FOR FEDERAL CLASS III CERTIFICATION IN LIEU OF A TRIBAL-STATE COMPACT; AND
- A REVERSAL OF THE SUPREME COURT'S RULING IN CABAZON.

THESE ARE JUST A FEW OF THE RECOMMENDATIONS THAT HAVE BEEN ADVANCED, BUT AS FAR AS I CAN DISCERN, THERE IS VERY LITTLE IF ANY DISCUSSION OR COMMUNICATION BEING HAD AMONGST THE AFFECTED GOVERNMENTS. INSTEAD, TERRITORIES HAVE BEEN STAKED OUT, AND SOME HAVE DECLARED THAT THIS IS WAR.

SOME HAVE EVEN SUGGESTED THAT THE COMMITTEE ON INDIAN AFFAIRS IN THE SENATE HAS BECOME TOO MUCH OF AN ADVOCATE FOR INDIAN POSITIONS, AND

SO IT MUST BE ELIMINATED.

I CAN TELL YOU THAT EVEN THOUGH I AM THE CHAIRMAN OF THE COMMITTEE OF JURISDICTION OVER THE INDIAN GAMING REGULATORY ACT IN THE SENATE, I HAVE NOT RECEIVED ONE CALL FROM A GOVERNOR OF ANY STATE IN WHICH INDIAN GAMING IS AT ISSUE. I WILL TELL YOU THAT I FIND THIS VERY STRANGE.

ON THE OTHER HAND, I HAVE HAD SEVERAL MEETINGS WITH THE ATTORNEYS GENERAL OF THE WESTERN STATES, AND I HAVE FOUND THEM TO BE A GROUP OF PEOPLE WHO ARE NOT ONLY AMENABLE TO DIALOGUE, BUT VERY FORTHCOMING AND STRAIGHTFORWARD IN EXPRESSING THEIR CONCERNS. I APPRECIATE THIS WAY OF APPROACHING A CONTROVERSIAL ISSUE. I THINK IT IS THE ONLY RESPONSIBLE WAY TO ATTACK A PROBLEM.

APPARENTLY, ALL SIDES HAVE COME TO BELIEVE THAT THERE ARE PROBLEMS WITH THE ACT, AND THAT IT NEEDS TO BE OPENED FOR AMENDMENT.

WE ARE AT A CRUCIAL JUNCTURE IN FEDERAL-INDIAN RELATIONS, AND I HAVE CALLED UPON YOU TO MEET WITH US TODAY TO DISCUSS WHAT NATIVE AMERICANS SHOULD DO IN THE FACE OF THIS AWESOME OPPOSITION.

I WILL TELL YOU THAT I AM INCLINED TO HOLD HEARINGS WITHIN THE NEXT SIXTY DAYS -- HEARINGS THAT WILL ENABLE ALL PARTIES TO OFFER UP THEIR PROPOSED AMENDMENTS TO THE ACT FOR THE SENATE'S CONSIDERATION.

BUT I WILL ALSO TELL YOU THAT I FIRMLY BELIEVE THAT SOME RATIONAL

DISCUSSION AMONGST THE GOVERNMENTS MUST PRECEDE THOSE HEARINGS. ACCORDINGLY, I AM TODAY WRITING TO THE GOVERNORS AND THE ATTORNEYS GENERAL OF THE STATES INVOLVED IN INDIAN GAMING, TO REQUEST MEETINGS WITH THEM AS SOON AS WE RETURN FROM THE APRIL RECESS. I WILL ADVISE THEM THAT IF IT IS NOT CONVENIENT FOR THEM TO COME TO WASHINGTON, I WILL TRAVEL TO WHEREVER THEY WANT TO MEET.

I FIRMLY BELIEVE THAT MATTERS OF THIS IMPORTANCE DESERVE NO LESS THAN A COMMITMENT TO HONEST AND RATIONAL DISCUSSION. BECAUSE WE WILL BE CONSIDERING ISSUES THAT TOUCH UPON THE MOST FUNDAMENTAL ASPECTS OF OUR RESPONSIBILITIES UNDER THE UNITED STATES CONSTITUTION AND THE TREATIES ENTERED INTO WITH THE INDIAN NATIONS.

WE WILL BE CONSIDERING MATTERS THAT GO TO THE HEART OF THE SOVEREIGNTY OF TRIBAL GOVERNMENTS, STATE GOVERNMENTS, AND THE FEDERAL GOVERNMENT.

THESE ARE NOT MATTERS THAT WILL BE TAKEN LIGHTLY -- THESE ARE NOT MATTERS THAT WILL BE ADDRESSED UNDER THE COVER OF DARKNESS.

THE FRAMERS OF OUR CONSTITUTION DID NOT TAKE THESE MATTERS LIGHTLY. THEY RECOGNIZED, EVEN IN THOSE EARLIEST DAYS OF OUR UNION, THAT THE RESPECTIVE RIGHTS OF THE THREE SOVEREIGNS HAD TO BE CAREFULLY BALANCED.

LET THERE BE NO MISUNDERSTANDING THAT IT IS WITHIN THIS CONTEXT THAT WE WILL PROCEED.

CONGRESS MUST NOT DESTROY INDIAN RIGHTS TO SERVE THE ECONOMIC INTERESTS OF THE NON-INDIAN GAMBLING INDUSTRY

THE SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. Udall) is recognized for 10 minutes.

Mr. UDALL. Mr. Speaker, when President Reagan went to Russia for his summit meeting, the hopes of this country went with him, particularly with respect to human rights for Russian citizens and the citizens of other repressive regimes. We recently passed a concurrent resolution in the House commending the President for furthering the cause of world human rights at the summit.

However, Mr. Speaker, there was at least one low point during the President's visit. In responding to a question posed by a student at Moscow University, the President showed an embarrassing and disappointing lack of knowledge about the rights and status of Indian tribes in this country.

Either through that lack of knowledge or through insensitivity, the President failed to admit that the history of this country's treatment of the first American has not been a good one. Either through lack of knowledge or insensitivity, the President failed to concede that Indian tribes and their members are at the bottom of this Nation's social and economic ladder. Either through lack of knowledge or insensitivity, the President failed to acknowledge that the rights and resources of Indian tribes and people remain under constant attack by the non-Indian society.

Unfortunately, Mr. Speaker, the President is not alone in his failure to understand the status of Indian people in this country.

The President—and many others in this country—do not appreciate that this great Nation of ours is built upon the heritage of the Indian tribes.

The President—and many others in this country do not understand that we look that heritage from them without their consent and, in many cases, over their strong objection.

The President—and many others in this country—either do not know or do not care that, in taking this land from the Indians, we made solemn promises to them that we would respect and protect the few rights and resources we left them.

The President—and many others in this country—obviously do not know or do not care that we, as a nation, have broken many of these promises when it has suited our needs or when keeping them would have been inconvenient to us.

Obviously, the President and many others in this country do not agree with Justice Hugo Black when he stated in his dissenting opinion in the case of *FPC versus Tuscarora Indian Nation*, "Great Nations, the great men, should keep their word."

Mr. Speaker, I am willing to admit that the past record of our treatment of Indian tribes has not always comported with the high principles and standards of democracy and universal justice. But I also want to be able to say to the Soviet Government and other oppressive regimes around the world that our past record is just that—a "past record". I want so much to be able to say to those regimes that our recent history and our future resolve is one of keeping those promises and keeping faith with our Indian tribes and people.

However, as the 100th Congress draws to a close and the 200th anniversary of our Constitution draws near, we once more stand upon the brink of one more breach of faith with the Indian tribes—not for some higher public good—not for some sacred principle, but to preserve the profits of the non-Indian gambling industry of this Nation.

When the rate of unemployment in this Nation edges over 7 percent, alarm bells ring in the economic and political hallways of the country. Indian tribes and people on the reservations have had to live with unemployment rates of 50 to 80 percent with little sense of outrage in this compassionate society.

Like below the poverty line is a remote fear for most Americans. Like above the poverty line is a distant dream for all but a few Indian people on the reservations.

Mr. Speaker, it is frustrating to me and it must be enraging to the Indians that I must once again remind the House of the great

It is frustrating to me and it must be demeaning to the Indian people that I must once again remind the House of the desperate condition and great need of our American Indian citizens.

So it would be most understandable if all but the most callous of us would rejoice that a few Indian tribes have found an economic enterprise which has cut their reservation unemployment rate by half or more without the aid of the taxpayers' dollars. With the severe cutbacks in Federal funding in recent years, it would be understandable if we were elated that revenue from this enterprise has helped Indian tribes to build health clinics, alcohol and drug rehabilitation centers, housing, and community buildings; to fund scholarship programs for the young and bursary programs for the elderly; to support child welfare programs and aid to the elderly and handicapped; and to meet a number of other desperate economic and social needs.

It would be understandable if we were rejoicing and if we were elated. But we are not.

Why? The economic enterprise these tribes have turned to in their great need is gaming, traditionally and immoral activity. If these Indian tribes were alone in turning to the activity, we could oppose their gaming activities on moral grounds.

But look around us. How many States have not adopted or are not considering adopting a State lottery to bolster State revenues? How many States do not permit and derive profit from horse racing, dog racing, off-track betting, *jai alai*, poker, blackjack, casinos or some other form of commercial gambling? How many church and service organizations do not run a bingo game or casino night to support their worthy causes?

While I am personally opposed to gaming and, in particular, government gaming, I'm afraid the time for moral outrage is past. Gaming as a source of governmental revenue and charitable funding is too well established to raise moral arguments against the Indians.

Mr. Speaker, the Indian tribes, using treaties we forced upon them, laws were passed without their consent, and our own courts, sued to vindicate their right to self-government, so jealously guarded by them and so solemnly promised by us. They went to our courts to fight for their right to engage in gaming activities without hindrance by State governments. And they won.

In the economic wasteland of the reservations that we have fostered, some of the tribes have found a small ray of hope for economic betterment. A chance for better health, better education, better jobs, a better future. But we can't permit that. Powerful economic forces have mobilized to insure that it does not happen.

The most effective way to prevent it is to make away their right to self-government to make that choice for themselves and to subject them to the laws and jurisdiction of the States. And that is what we are asked to do—to destroy that tribal right of self-government by unilaterally imposing upon them State rule.

And what is the justification given for once again breaking our word to the Indians? The opponents of Indian gaming activities raise the specter of organized crime. In 15 years of commercial gaming activity on Indian reservations, there has not been one clearly proven case of organized crime infiltrating Indian gaming. Yes, there has been whispered rumors of such activity. And, yes, there is a potential and I too share that concern.

However, the opponents of Indian gaming, with little evidence, assert that the infiltration of organized crime is a clear and present danger and the only remedy is State jurisdiction. They say the tribes and the Federal Government cannot handle organized crime; only the States can. They would have us believe that the FBI, the Justice Department, and other Federal law enforcement agencies cannot do what the States can.

And who are these opponents of Indian gaming who have raised the specter of organized crime? Who are these entities who are demanding that we break our word to the Indian tribes and destroy another aspect of their right of self-government? The Indian opponents that are instructing us in the evils of organized crime are the gambling casino operators of Nevada, the Horse Track Owners Association, and American Greyhound Track Operator's Association.

Mr. Speaker, let us be candid. This debate is not based upon moral high ground, crime control, and a level playing field. It is, quite simply, economics. The gambling lords of Nevada and the race track owners of the country perceive an economic threat to their profits from the bingo game on the *Isle Tula* Indian Reservation in Washington and the card parlor on the Cabazon Reservation in California.

In their view, it is wrong that the few dollars being earned by Indian tribes from gaming for health, education and social programs are being diverted from the crap tables of their casinos and the betting windows of their tracks.

And they clearly intend to stop it. They have poured thousands of dollars into a lobby effort to secure the enactment of legislation imposing State jurisdiction on Indian tribal gaming activities. Why? Because past history has shown that, with State control, the competing Indian economic activity, one way or another, will be suppressed in favor of the non-Indian interests.

Mr. Speaker, I note for the record that, on November 18, 1983, I introduced the first bill providing for additional regulation of gaming on Indian reservations. I did so not to destroy

the right of tribes to engage in that activity, but to protect them as they engaged in it and to protect the gaming public. And I did so with the spirit of tribal self-government. I assured them I would not support the unilateral imposition of State jurisdiction over their governments.

But I think that I have shown myself to be a realist in the legislative process. Recognizing the real and fabricated concerns of non-Indian interests and over the strong objection of Indian tribes, I laid on the table a compromise offer which included significant State jurisdiction over class III gaming activities while retaining only basic tribal governmental rights. No reasonable person could say that this was anything other than an honest attempt at compromise. In fact, it went well beyond a mid-point compromise.

The horse and dog track interests sneered at the offer and reiterated their demand for total domination of Indian rights. The casino owners expressed a willingness to accept my compromise subject to certain changes which brought it right back to State control. Their unwillingness to accept such an honest, good faith offer of compromise only reinforces the conviction that their concern is not organized crime in Indian gaming, but the suppression of Indian competition.

Mr. Speaker, I reluctantly take my compromise off the table and revert to my support for the language of my bill, H.R. 2507, which will provide effective regulation of Indian gaming within the context of our solemn promises to the Indian tribes. Still, I am willing to consider compromise if the non-Indian gaming industry is willing to respect Indian rights and are willing to leave a small piece of the pie for the Indian people.

Until then, I must oppose legislation damaging to Indian self-government and Indian rights. It may be that an intransigent non-Indian gaming industry has the economic power and political muscle to shove State rule over Indian governments down the throat of the tribes or to simply destroy the right by a Federal ban. But it will be done without my consent and without my support.

Mr. Speaker, I call upon the Members of the House who believe in the integrity of this Nation's word and who believe that the light for human rights begins at home to oppose all efforts to destroy the right of Indian tribes to self-government and to unilaterally impose State control over their affairs.

Ms. ENGLISH. Thank you.
Congressman Hoagland.

STATEMENT OF HON. PETER HOAGLAND

Mr. HOAGLAND. Madam Chair and members of the committee, I appreciate the opportunity to come here this morning.

Let me say initially that the inexcusably high unemployment rate on reservations around the country and the health and education and social needs of tribes deserve priority attention by this Congress. I want very much to be a part of addressing those issues.

However, surely there are better ways of doing so than imposing economic hardship and difficulties that impose social problems; most of all, as Governor Romer indicated, imposing fundamental life-style changes on communities across this Nation without their consent.

The fundamental problem with the Indian gaming law is that the Federal Government is imposing on communities throughout the country, from Rhode Island to Nebraska to Duluth, Minnesota, a style of life that has not been consented to by State or local government. I think that is fundamentally wrong for this Congress to do that.

Now, I fully acknowledge that casinos and bingo halls have created jobs for many tribes in America. But it is improper, I think, for Federal law to have the effect of superseding State gambling regulations. And in many cases, as we know, gaming on tribal lands goes far beyond what the States have authorized in their own laws.

I introduced a bill yesterday, H.R. 1624, which in several ways attempts to make gambling on Indian lands consistent with gambling authorized by State law. The thrust of the bill is consistent with the National Governors' Association policy adopted by an overwhelming majority of the governors in this Nation that indicate that gaming should be allowed only when consistent with State laws and regulations.

Governor Romer discussed that policy, and I think very effectively pointed out how wrong it is from the point of a Governor or another locally elected official for the Federal Government to impose such a foreign life-style change on communities without their consent.

Now, surely the treaties that we entered into with the Indian Nation years ago and recently do not require the Federal Government to mandate casino gambling on small communities around the country. Surely there are other ways that we can effectively provide economic development on Indian reservations without imposing all of the problems, all of the difficulties, all the law enforcement requirements on local communities.

Now, I have here the statement of Dr. Brown, the Assistant Secretary of Indian Affairs, that this subcommittee will shortly hear this morning. And in that statement he states, as I understand it, and I certainly stand to be corrected if I am wrong, on page 3 that "the policy of the Interior Department is to encourage cooperative working relationships and to ensure that tribal sovereignty is protected and to preserve gaming as an acceptable means of generating tribal revenue."

I certainly agree with that statement as far as it goes. But it is not acceptable to do those things by way of imposing casino gambling over the objection of local communities. And then also I think the Interior Department must realize that the needs and desires of local communities, the requirement that they fully consent to something like a casino, is an essential part of any fair balance in attempting to balance the interests of tribes, rights they have inherited through treaties we have engaged in for hundreds of years, as against the rights of local communities.

I simply do not believe it is good public policy to allow full-scale casino gambling operations in communities like Council Bluffs, Iowa, across the river from Nebraska, without the complete knowledge and informed consent of the community, appropriately expressed through State government or through a vote of the people.

I think we are asking for very serious problems if we don't seek to balance the rights of the Indians to exercise their sovereignty on their own lands by offering gambling, against the rights of the customer base of those casinos, and the locally elected officials and the State government officials that are elected to protect the interests of the customer base.

The casino gambling on Indian lands does not have as its customers only Indians. It has as customers the entire rest of the community. And the interests of the entire rest of the community have to be taken into consideration and applied to the balance that is applied by the Interior Department, by Congress, by others that will be involved in making policy in this area.

So I would hope this committee would continue with this dialogue, will recognize that the Indian Gaming Act, while well intended, has a number of serious problems and that we need to address those problems with legislation in this Congress.

Thank you, Madam Chairman.

[Prepared statement of Mr. Hoagland follows:]

TESTIMONY OF CONGRESSMAN PETER HOAGLAND

April 2, 1993

**before the Subcommittee on Native American Affairs
Committee on Natural Resources**

I am pleased to appear before you today to discuss implementation of the Indian Gaming Regulatory Act. I commend the subcommittee for focusing on this law early in the 103rd Congress because for many communities across the country, it is creating serious problems.

I was not in the Congress when the Indian Gaming Regulatory Act was written in 1988. The Senate Committee report that accompanied S. 555 in the 100th Congress indicates that the regulation of gaming on Indian lands "has been the subject of much controversy" and that the bill was responding to several years of discussion and negotiations between tribes, states, the gaming industry, the administration, and the Congress, in an attempt to formulate a system for regulating gaming on Indian lands. I am sure the law was well intended; but for many reasons, it is not working well.

My major concern is that the law has resulted in the conduct of forms of gambling, particularly high-stakes casino gambling, in states that have not authorized these forms of gambling. My overriding goal is to change the law so that gaming conducted on Indian lands will not exceed gaming authorized by state legislatures and governors on non-Indian lands.

Yesterday, I introduced a bill which attempts, in several ways, to make gambling on Indian lands consistent with gambling authorized by state law. The thrust of the bill is consistent with a policy adopted by the National Governors Association on February 2, 1993, which asserts that tribes should be limited to running the kinds of gaming allowed in the state and under the same rules. I am sure Governor Romer will discuss NGA's policy with you in full.

Let me be the first to say that for many tribes the operation of gaming establishments has brought needed revenues for addressing many economic development and other problems of tribal members. The inexcusably high unemployment rate on many reservations and the health, education and social needs of tribes deserve priority attention by this Congress and I want to be part of an effort to address those problems. Unlike my bill from the 102nd Congress, I have included as Section 6 a new employment tax credit for employers who hire individuals who are enrolled members of a tribe (or their spouses) in an effort to encourage businesses to locate on Indian lands and to employ tribal members.

I fully acknowledge that casinos and bingo halls have created jobs for many tribes. A great deal of the revenue, of course, has gone to those casino operators retained by the tribes to underwrite and manage the casinos for them. But my concern is that current federal law has the effect of superceding state gambling restrictions and in some cases, gaming conducted on tribal lands goes far beyond what a state has authorized in its own laws and has fundamentally changed the character of communities without their consent.

I became concerned about the implementation of this law when, in my community, two Nebraska tribes, backed by a Nevada gambling company, attempted to get the Department of Interior to place lands in trust for the construction of a \$67 million casino-convention complex in Council Bluffs, Iowa, adjacent to my district. The Iowa legislature has authorized riverboat casino gambling with low wager and loss limits per excursion and by approval of the voters of the county in which the gaming would occur. Iowa law does not authorize land-based casino gambling. The tribes argued that because Iowa has authorized this limited form of casino gambling, the state must agree to allow a full-blown, multi-million dollar casino in the heart of the Midwest.

In my view, this would be a massive project in a small city just across the boundary from a much larger metropolitan community, which would provide the lion's share of the customers, and the community would have no ability to protect its citizens by exercising regulatory authority and would not share in any of the profits it could direct to social programs to deal with the results of gambling

and all of its associated activities. I simply do not believe that it is good public policy to allow full-scale casino gambling operations in communities like Council Bluffs, Iowa, without the complete, knowing, and informed consent of a community appropriately expressed through its state government or through a vote of the people.

Some may maintain that my bill is not constitutional. I would like to submit for the record a memorandum from the American Law Division of the Congressional Research Service of the Library of Congress concluding that the bill that I introduced in the previous Congress, which is very similar, would "exercise the broad federal police power over Indian affairs" and "appears to contain no constitutional defects and would, thus, appear to be without constitutional infirmity."

My bill does not stop gaming on Indian lands. It merely attempts to bring it into line with the precise extent of gaming a state has allowed with the consent of its residents through changes in its gambling laws. I urge you to give this your full consideration as you undertake your examination of this law.

Current Law

The Indian Gaming Regulatory Act of 1988 (P.L. 100-497) established a system for regulating gaming on Indian lands and attempted to balance the interests of the tribes, the federal government and the states. The law classifies gambling by tribes into three classes. Class I, traditional or social gaming played in connection with tribal ceremonies or celebrations, is regulated by the tribes. Class II gaming includes bingo, pull tabs, lotto, punch boards, tip jars, and card games authorized by state law. Class II gaming is regulated by a Presidentially-appointed National Indian Gaming Commission and the tribe or solely by the tribe if issued a certificate of self-regulation. Class III gaming -- gaming that is not Class I or II -- is, essentially, high-stakes gaming such as casino-type games and parimutuel betting. Class III gaming is regulated by a tribal ordinance and a tribal-state compact approved by the Secretary of Interior.

Escalation

In 1988, Indian-sponsored bingo operated in 24 states. Today, many forms of Indian-sponsored gambling are conducted in 25 states. The Interior Department has authorized 74 tribal-state compacts in 18 states. Fifty-eight tribes have compacts with states.

Since enactment, there has literally been an explosion of Indian-sponsored gambling -- and an explosion of lawsuits. At least five suits have been brought and completed. At least 15 states now are in litigation, according to the Western Attorneys General Association.

The Indian Gaming Regulatory Act is ambiguous and replete with holes that have been exploited all too often. We are faced with a law that has brought about an unprecedented clash of tribal interests with state interests.

The bill addresses several problems:

Problem 1: Going Beyond State Authorized Gaming

In our legal system, control of gambling has traditionally been vested with the states. Only two states allow full-scale, high-stakes casino gambling, Nevada and New Jersey.

Under IGRA, a tribe may engage in Class II gaming if the state permits "such gaming." To conduct Class III gaming, tribes must adopt an ordinance and negotiate a tribal-state compact which then must be approved by the Secretary of Interior. Congress created the compact process to recognize that states have a legitimate interest (such as taxation and law enforcement) in Indian-sponsored gaming enterprises.

Tribes have argued that if a state allows *any form* of Class III gaming (like Iowa's authorization of limited-stakes riverboat gambling), they should be allowed to conduct *all* forms of gaming, like high-stakes casinos. In Wisconsin, for example, a state that allows only on-track parimutuel wagering and a lottery, the U.S.

District Court for the Western District of Wisconsin held, in effect, that unless a particular type of gambling is *expressly prohibited*, it is permitted in the state. I believe this decision greatly stretches the law and Congress's intent. As a result, high-stakes casinos have been set up in some areas where not explicitly authorized by state legislatures.

The bill addresses this problem by adding into the law to the current general provision requiring Indian-sponsored gaming activities to parallel state laws, that aspects of gaming, like methods of play, periods of operation, limitation on wagers, pot sizes and losses, can also not exceed what a state authorizes.

Problem 2: Charitable Gaming A Basis for Full-Scale, For-Profit Gaming?

The second problem is that tribes have sought and courts have sanctioned full-scale gambling in states that under their own laws authorize *only charitable gaming*, like church and other nonprofit "Las Vegas nights." One case in point is Connecticut. After a court battle, Connecticut has been forced to allow a full-blown, \$58 million, commercial casino in Ledyard, even though a commercial casino on non-Indian land would violate the state's criminal laws. Because Connecticut allows "Las Vegas Nights" by charitable organizations, the court found charitable gaming sufficiently similar to commercial casino gambling and therefore subject to a compact.

My bill addresses the charity-gaming problem by making it clear that the provision of the law authorizing Class II and Class III gaming in states that permit "such gaming" applies only in states that authorize gaming "as part of a commercial, for-profit business enterprise." In other words, Indian-sponsored gaming could only be conducted where commercial, for-profit gaming is conducted and only to the extent authorized by state law for non-Indian gaming sponsors.

Problem 3: Representing Class III as Class II

As casinos on Indian lands have proliferated across the country, so have the forms of gambling in those casinos. Creative gambling promoters have created new video and electronic gambling devices, not contemplated when the law was enacted in 1988. We

now have video poker, video bingo and video pull tabs. I have been told that there is a game called Bingojack, a casino table game that is described as bingo, but is actually the traditional casino game of Twenty-One. The California Deputy Attorney General testified in January 1992 that gambling devices are prohibited in the state, yet "a number of California tribes have installed slot machine devices in their bingo facilities, arguing that these machines are merely 'technological aids' to permitted Class II games"

I believe Congress intended that electronic and electromechanical facsimiles of games of chance or slot machines of any kind are to be Class III gaming devices and thus subject to tribal-state compacts. The Indian Gaming Regulatory Commission has published regulations on this issue and Congress should certainly look to those regulations for guidance.

My bill attempts to clarify that electronic games are Class III and thus subject to a tribal-state compact. No law can delineate and address every possible form of technology and my bill may not be the final answer, but I hope it will send a signal to gambling promoters that high-stakes games cannot be electronically disguised as the more innocuous Class II games like bingo and thereby circumvent the required compact with the states.

Problem 4: What Is "Good Faith"?

Under the law, a tribe may sue a state to compel negotiations within 180 days after a tribe's request to enter into negotiations. If a court finds that the state "has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period." The law then sets forth factors which the court may take into account to determine whether a state has negotiated in good faith. My bill would add to the law that a court cannot consider as "bad faith" a demand by the state that the gaming activities requested in the compact be conducted on the same basis as gaming activities conducted in the state by non-Indians.

I do not believe Congress intended to force states to ignore their public policy responsibilities in the compact process. I believe the intent was to encourage a true negotiation and reconciliation of genuine conflicts. I do not think states should be subject to a good

faith lawsuit for merely trying to keep Indian gaming activities within the same legal boundaries their citizens have set by their state laws.

Problem 5: Burden of Proof

Under current practice, in bringing a suit contending that a party has not negotiated a tribal-state compact required to establish Class III gaming in good faith, the respondent (usually the state) must prove the allegation false. The bill would place the burden of proof on the good faith issue with the moving or alleging party.

Problem 6: State Voice on the Commission

The 1988 law established the National Indian Gaming Commission to approve tribal ordinances regulating Class II and Class III gaming and to approve management contracts for Class II and Class III gaming. The Commission also has the authority to levy civil fines for violations and to issue orders of temporary closure of gaming activities that violate the law. The Commission is composed of a chairman appointed by the President (with Senate confirmation) and two associate members appointed by the Secretary of the Interior. At least two members must be members of a tribe.

My bill would add two more associate members to represent the states. While I am not certain what the exact numbers of various types of members should be, I do believe that states, because their communities are impacted by Indian-sponsored gaming, states should be represented on the commission.

Problem 7: Communities Near State Borders

Under the law, when tribes apply to the Secretary of Interior to take land not contiguous to reservations into trust for gaming, the Secretary must consult with the applying tribe, the "appropriate state, local officials and officials of other nearby Indian tribes." The Secretary must determine that a gaming facility would be in the "best interest of the Indian tribe and its members and would not be detrimental to the surrounding community, but only if the governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination"

My bill addresses the problem that has arisen in my home district of Eastern Nebraska and makes clear that the term "surrounding community" includes nearby communities "including communities across State borders that would be directly affected by gaming conducted on such lands." With the term "surrounding community" undefined, it is questionable whether under IGRA the local community of Omaha or the state of Nebraska will have any voice in the approval of this application. My bill would make it clear that the Secretary must take into account the views of a bordering states "directly affected."

PROBLEM 8: UNEMPLOYMENT AMONG THE TRIBES

Unemployment is higher among the Indian tribes than among any other group, according to the 1990 census. According to the Bureau of Indian Affairs, Indian unemployment is even worse on or near the reservations. Indians in the BIA service population who are unemployed but seeking work -- the Bureau of Labor Statistics definition of unemployment -- have encountered jobless rates at or over 40% for the last nine years. Tribes often argue that gaming activities can provide employment for members of the tribe and that a portion of the proceeds obtained from gaming activities can be utilized by the tribe to reduce the deplorable levels of unemployment.

My bill would create an Indian employment tax credit which would be available to employers hiring employees who are enrolled members of a tribe or the spouses of such members. The Bill would require that the employees live on or near the reservation and that the services rendered by the employees be performed within the Indian reservation. The tax credit is intended to encourage employers to establish enterprises on Indian lands and to employ Indians to work in those facilities.

The amount of the credit for any taxable year is 10% (which credit is increased to 30% if at least 85% of the employer's workforce is comprised of native Americans). The credit would be available for the first seven years the employee works for the employer; it would not be available for any employee who is paid over \$30,000 by the employer in a taxable year.

Adding Noncontiguous Lands

Clearly, Congress should also look at the issue of whether a tribe should be allowed to purchase real estate and apply to the federal government to place the land in trust for gaming, thus creating an "extension" of the reservation and an enclave virtually free of state regulation. The IGRA generally prohibits taking land into trust for gaming after October 17, 1988. Although, the law makes exceptions, it clearly sets a higher standard for allowing gaming on these new "Indian" lands. My bill is a small step toward addressing what is really a much larger problem, that of gambling promoters and tribes "shopping around" to take advantage of state laws and putting together creative real estate gambling deals far from the reservation and free from state control. I hope my bill will spark a serious examination of this issue.

Conclusion

I am pleased we are revisiting the Indian Gaming Regulatory Act. Given the trend the last four years and the problems created, tribes may lose more than they have gained as more and more communities rebel against this gambling avalanche that their laws do not sanction.

Thank you again for the opportunity to discuss these issues with you this morning.

Ms. ENGLISH. Thank you.
Congressman Pastor.

STATEMENT OF HON. ED PASTOR

Mr. PASTOR. Good morning, Madam Chair and members of the committee. I would like to thank you for providing me this opportunity to testify before the subcommittee.

I would like to extend a special recognition to you, Madam Chair, one of Arizona's new Members of Congress. I know that you will be a positive addition to the subcommittee and represent the interests of our Native American populations very well.

Madam Chair, I want to begin by stating that it is unfortunate that we are meeting here today to discuss the issue of Indian gaming. It is unfortunate that many Indian tribes and nations have once again fallen victim to what has been an unfortunate history of broken treaties and unfulfilled promises.

As you know, Madam Chair, the Indian Gaming Regulatory Act was signed into law on October 17, 1988. IGRA represented a large, though not unique, departure from traditional Indian law. The signing of the law marked only the second time in U.S. history that Congress has legislated some degree of State authority over Indian tribes. IGRA involved a large concession on the part of Native Americans—a partial surrendering of their self-determination in exchange for economic opportunities.

Now it seems as if the provisions outlined in IGRA have become all but meaningless in the face of efforts of several State governors to undermine the Act and the economic opportunities that have come with gaming operations.

While I recognize and I understand the concern that States have with gaming on Indian reservations, the fact still remains that in general it is the States and not the Indian tribes that have failed to negotiate in good faith.

I also recognize the concern for limiting the number of casino-style gaming devices that operate on Indian reservations. But I want to state, Madam Chair, that the Native American members of my district also recognize this need and are willing to abide by agreements that are the result of good-faith negotiations.

As you know, 93,000 Native Americans are under-housed. Many are homeless. The unemployment rate on Indian reservations is larger than the national average. Suicide, alcoholism, tuberculosis, and diabetes rates among Native Americans are higher than among all other ethnic groups.

Obviously, many reservations do not offer sufficient economic and educational opportunities to its members. For many tribes, Indian gaming is the most successful economic enterprise on the reservation, and has provided the necessary dollars to support housing, scholarships, economic development, and educational programs like Head Start.

I ask the opponents of Indian gaming to propose a substitute for the billions of dollars that this industry generates, all of which is invested back into the reservations.

Madam Chair, speaking from my experience as a Representative from Arizona, I can say to you that the Indian tribes have been negotiating in good faith and adhering to the spirit of IGRA. At least

one tribe in my district has completed the mediation stage in the Tribal-State compact negotiations. And all they ask is that the integrity of the compact the mediator has chosen be maintained.

It is unfortunate that the State government has not demonstrated an equal willingness to compromise and abide by the spirit of IGRA. It is also disturbing to note that the National Governors' Association has devoted so much of its efforts to an industry that represents only 2 percent of all the gaming activities nationwide.

Again, I must state that it is unfortunate that events have brought us to this point. Though I was not a Member of Congress at the time, it is my belief that, had both the Native American community and this House known of the States' efforts to sidestep IGRA, the Act would never have been passed.

Madam Chair, I appreciate your efforts in reexamining this issue. I do not know what solutions you and your colleagues may arrive at. As you search for solutions, I hope you will carefully weigh the benefits that gaming operations have on the overall development of tribal resources against the governors' desires to extend their authority into traditional Federal-Native American relationships.

Thank you, Madam Chair and members of the subcommittee.
[Prepared statement of Mr. Pastor follows:]

STATEMENT OF THE HONORABLE ED PASTOR
Arizona - Second District

before the

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
House Committee on Natural Resources

April 2, 1993

Mr. Chairman, I would like to thank you for providing me this opportunity to testify before the Subcommittee. I would also like to extend a special recognition to one of Arizona's new Members of Congress who also sits on the Subcommittee, Representative Karan English. I know she will be a positive addition to the Subcommittee and represent the interests of our nation's Native American populations well.

Mr. Chairman, I want to begin by stating that it is indeed unfortunate that we are meeting here today to discuss the issue of Indian gaming. It is unfortunate in that many Indian Tribes and Nations have, once again, fallen victim to what has been an unfortunate history of broken treaties and unfulfilled promises.

As you know Mr. Chairman, the Indian Gaming Regulatory Act (IGRA) was signed into law on October 17, 1988. IGRA represented a large, though not unique, departure from traditional Indian law. The signing of the law marked only the second time in U.S. history that Congress has legislated some degree of State authority over Indian tribes. IGRA involved a large concession of the part of Native Americans - a partial surrendering of sovereignty in exchange for economic opportunity.

Now it seems as if the provisions outlined in IGRA have become all but meaningless in the face of efforts by several State Governors to undermine the Act and the economic opportunity that has come with the gaming operations. While I recognize and understand the concerns that States have with gaming on Indian reservations, the fact still remains that, in general, it is the States and not the tribes that have failed to negotiate, pursuant to IGRA, in good faith.

I also recognize the need for limiting the number of casino-style gaming devices that operate on Indian reservations. I want to state, Mr. Chairman, that the Native American members of my district also recognize this need and are willing to abide by agreements that are the result of good-faith negotiations.

As you well know Mr. Chairman, 93,000 Native Americans are homeless or underhoused; the unemployment rate on Indian reservations is far above the national average; suicide, alcoholism, tuberculosis, and diabetes rates among Native Americans are higher than among all other ethnic groups. Obviously, many reservations do not offer sufficient economic and educational opportunities. For many tribes, Indian gaming is the most successful economic enterprise on the reservation and provides the necessary dollars to support housing, scholarships,

economic development, and educational programs like Head Start. I ask the opponents of Indian gaming to propose a substitute for the billions of dollars that this industry generates, all of which is invested back into the reservations.

Mr. Chairman, speaking from my experience as a Representative from Arizona, I can say to you that the Indian Tribes have been negotiating in good faith and adhering to the spirit of IGRA. At least one Tribe in my district has completed the mediation stage in the tribal-state compact negotiations. All they ask is that the integrity of the compact the mediator has chosen be maintained. It is unfortunate that the State government has not demonstrated an equal willingness to compromise and abide by the spirit of IGRA. It is also disturbing to note that the National Governor's Association has devoted so much of its efforts to an industry that represents only 2% of all gaming activities nationwide.

Again, I must state that it is unfortunate that events have brought us to this point. Though I was not a Member of Congress at the time, I believe that, had both the Native American community and this House known of the State efforts to sidestep IGRA, the Act would never have been passed.

Mr. Chairman, I appreciate your efforts in re-examining this issue. I do not know what solutions you and your colleagues may arrive at in response to these recent problems. As you search for solutions, I hope you will carefully weigh the benefits gaming operations have on the overall development of tribal resources against many Governors' desires to extend their authority into the traditional federal-Native American relationship.

Thank you, Mr. Chairman.

Mr. RICHARDSON [presiding]. The Chair recognizes the gentleman from Rhode Island.

STATEMENT OF HON. RONALD K. MACHTLEY

Mr. MACHTLEY. Thank you. It is my honor to testify on what is a very important issue today. I appreciate the opportunity to address this subject.

I commend my colleagues for what I think were very important statements and also the governors who have testified here today.

I, perhaps as Peter Hoagland, am not opposed to Indian gambling or gaming per se, and I deplore, as I think all Americans do, the treatment and conditions that Native Americans endure today and have endured throughout our history.

The history between the Indians and the United States Government has often not been as one would like. But the relationship between the United States and the States and the Native Americans works best when we are including all three parties at the table to try to negotiate out a balance of each individual's or sovereignty's rights.

The Governor of Rhode Island has I think presented a very accurate and very important anomaly which is occurring in our State of Rhode Island, clearly not what was intended. In Rhode Island soon, unless something is done, we will have one million people subjected to a casino where no other casino exists in the State, a \$40 million operation, enterprise, which will help what is estimated to be by the Governor and others approximately 200 Native Americans.

The important factor today in this hearing is, What is the proper balance between the Federal Government usurping the civil, criminal and regulatory rights of the State and trying to help our Native Americans toward a better life style?

I remember when I was studying law, a Supreme Court Justice as he tried to deal with this issue in the maritime area said, "The law is not the presence in the sky, but it is the articulate voice of the sovereign. That sovereignty must be identified." In this case, the sovereignty which must be identified is the Federal Government and the States.

The Federal Government only has the rights and powers which the States have granted to them. Yet, in this IGRA, I believe the Federal Government has usurped the civil, criminal and regulatory rights of the State, and we have created an imbalance which ought to be addressed.

I think the result today is that any Native American Indian tribe which wants to establish a high-stakes casino gambling enterprise on their lands may go to the courts and do so so long as any State in which they are located has any type of class III gambling. I don't think that was intended by our IGRA legislation.

The State of Connecticut is one of the several States that certainly attests to the fact of its inability to stop high-stakes gambling casinos even though their State's rules and regulations do not permit it anywhere else.

I am convinced that Congress did not intend for today's very unbalanced situation to exist when it passed IGRA in 1988. Perhaps even worse is the fact that the federal court system rather than the

more appropriate Executive Branch has taken over the important role of implementing IGRA. Turning over authority to the courts is something that everyone in this body I think is opposed to.

This hearing, I think, is very important to oversee the implementation of IGRA and to see how we might change it so it will be better balanced. And I am here to testify that I believe the law is not working and ought to be changed, that States like Rhode Island, which is very small, have legitimate States' rights interests that have to be balanced, and now are not being balanced.

Although this hearing is not intended to look at specific areas of change, I would suggest that my legislation which I filed, H.R. 1261, and the legislation which Mr. Hoagland has filed and I have cosponsored, is the way in which we could balance this particular class III gaming regulatory action, by stating that only those specific types of gaming which are permitted under State civil or criminal or regulatory law would be permitted as a matter of right on the Indian reservation.

There is no single solution to this problem. I think the basic problem lies in how we decide what will be the State's rights relative to class III gaming. We in Rhode Island have a very serious issue at hand. We must have some resolution.

As the Governor indicated, the simple solution for the State of Rhode Island might be merely to have legislation which states that the Rhode Island Settlement Act should have been included in IGRA as it was passed.

I would like to submit for the record the most recent District Court opinion by the district court judge in the United States District Court for Rhode Island, which gives I think a very clear example of the unintended consequences as it relates to the Rhode Island Indian tribe. I ask unanimous consent to submit this for the record.

Mr. RICHARDSON. Without objection.

[Editor's note.—The opinion was not received at the time of printing.]

Mr. MACHTLEY. Mr. Chairman, as you or other members of this subcommittee try and deal this issue, I would hope you would deal with it not only in the nature of how do we best help our Native Americans, which certainly deserve our attention, but how do we balance the rights of the States to ensure that a large population is not subjected and not overrun by a federal action which usurps their criminal, civil and regulatory laws.

Thank you very much.

[Prepared statement of Mr. Machtley follows:]

STATEMENT OF REPRESENTATIVE RONALD K. MACHTLEY
BEFORE THE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE

APRIL 2, 1993

I appreciate having the opportunity to testify before the Native American Affairs Subcommittee today on the Indian Gaming Regulatory Act (IGRA). As with any federal law, IGRA's implementation ought to be carefully scrutinized in order to determine if the intent of Congress is being carried out.

Mr. Chairman, the relationship of Native Americans with the U.S. federal government has a long, eventful and telling history. No one can argue that this relationship includes numerous examples of mistrust, animosity and oppression. What history tells us is that relationship between the U.S. government and Native Americans is most successful if we are able to balance the competing goals of preserving the basic interests of the federal government and recognizing the historical rights of Native Americans to their land and to their way of life. While I fully recognize that achieving this balance is not always easy, it is certainly a goal worth fighting for.

Another factor important in today's hearing on IGRA is the question of the States rights to govern without federal government or other intervention. In passing laws on the federal level, we in Congress must always confront the question of just how far to go in setting federal policy without unduly usurping the authority of the

States. We must never lose sight of the principle that the States gave to a federal sovereign their rights. Passing and overseeing a law such as IGRA provides a good example of the difficulty of balancing federal and State interests. As a well-known Justice once said, "the law is not a brooding omnipresence in the sky, but the articulate voice of a sovereign that must be identified."

Achieving a fair and proper balance among the federal government, the States, and private entities such as Native Americans has been done successfully in the past. Unfortunately, though, IGRA has simply failed to achieve this ideal of a fair balance. Instead, through a long and arduous history of federal court cases, IGRA has given Native Americans a distinct and inappropriate advantage in setting gaming policy, exclusive of State's rights. The States, and indeed, even the federal government, are virtually powerless to assert their respective roles in implementation of IGRA.

It is fair to say that any Native American tribe that wants to establish a high stakes casino on its reservation under current law can do so, so long as the State offers any single form of Class III gaming. Even if State law prohibits every form of Class III gaming but one, this is not enough to block establishment of a Las Vegas-style casino. The State of Connecticut is one of several states that can certainly attest to this fact, given its inability, through a long legal battle, to prevent the Foxwoods casino in Ledyard from opening.

My home state of Rhode Island also provides an example of the unintended but harsh power of IGRA. The U.S. District Court in Rhode Island recently ruled that IGRA takes precedence over the 1978 Rhode Island Indian Claims Settlement Act, a law which specifically declared that the settlement lands of the Narragansett Tribe are subject to the civil and criminal laws and regulatory jurisdiction of the State. The court's unbalanced interpretation of IGRA is further illustrated by its ruling in favor of the Rhode Island Narragansetts despite report language contained in IGRA stating that the law does not supersede the Rhode Island Claims Settlement Act. Other States, including Wisconsin and Nebraska, have also found themselves powerless in the face of IGRA.

Mr. Chairman, I am convinced that Congress did not intend for today's very unbalanced situation to exist when it passed IGRA in 1988. Perhaps even worse is the fact that the federal court system, rather than the more appropriate executive branch, has taken over the role of implementing IGRA. Turning over authority to the courts is an outcome I think all sides of this debate would like to see reversed. It is regrettable to once again see the term "legislating from the bench" used to describe a most unwanted result.

This hearing is being held to oversee implementation of IGRA. I am here to testify that the law is not working well at all, and needs to be fixed immediately. Although this hearing is not intended to review legislation per se, I think it's entirely clear that some sort of legislative solution is necessary not only to give

some sort of rightful authority back to the States, but also to take the responsibility of Indian gaming regulation out of the federal courts. In addition, we need to act quickly so that States currently addressing proposals to establish Indian casinos -- such as my home state of Rhode Island -- have the benefit of a more understandable and fairer federal law.

As many of you probably know, Congressman Hoagland, myself and others support legislation to give State laws at least some weight in the regulation of Indian gaming. While I would prefer our more restrictive approach, I think all sides of this debate agree that something should be done legislatively to at least clarify the law. I stand ready to work with the Administration, with the States, and with members of this subcommittee, and with Native Americans to make necessary improvements to IGRA. Mr. Chairman, I would be pleased to answer any questions you might have.

Mr. RICHARDSON. I thank the gentleman.
I appreciate all of my colleagues testifying.

Let me ask my good friends, Mr. Machtley and Mr. Hoagland, you both have proposed substantial legislation to deal with this issue. Do you see any way that this issue can be resolved to your satisfaction by administrative action, by action by the Department of the Interior, by intervention, perhaps, with the President, as he is doing in some of the more difficult and contentious issues in this arena?

Mr. MACHTLEY. The only thing I would suggest is that the courts have already taken judicial notice of the current law, and in the case that is pending and on appeal out of the U.S. District Court in Rhode Island, the courts have said that clearly there is a right under the IGRA legislation for the Indian tribes to go forward. At this point in this particular stage, at least as it is for Rhode Island, I don't see how administrative action would be able to change this.

I think there is the need for legislative action to clarify what was intended—and I am only looking at class III particularly—the issue of what is permitted in the States and what is not permitted in the States.

Mr. HOAGLAND. I am not even sure I am a lawyer anymore, Mr. Chairman, and I am certainly not an expert in IGRA, but I can tell you that my understanding of the way the law works is that, as my colleague from Rhode Island has indicated, if a State allows any form of class III gambling—a State ticket lottery, for instance, or in the case of Connecticut occasional nonprofit Las Vegas nights for churches and organized labor organizations—if a State allows any form of what is called class III gambling, why, then an Indian tribe is entitled to put any other form of class III gambling on its properties. And it is entitled to go to court if the State refuses and force the State to enter into a compact. In other words, the courts impose compacts on States against their will. That is exactly what happened in Connecticut.

I think one of the most unanticipated consequences—I can't think of a better example of an unanticipated consequence than Connecticut—which allowed occasional nonprofit casino nights and because of that imposed on them over objection of the State government this multi-million-dollar, full-scale, Las-Vegas-type casino. And I don't think that the Secretary, Mr. Chairman, can alter that structure.

I think in spite of the Secretary's policies and positions, Indian tribes are entitled to go to court and get orders imposing on the local entity and casino, regardless of what the feelings of the local entity are.

Mr. RICHARDSON. Congressman Torres, you have been very involved in the class III issue, and we are familiar with your bill. In light of what you have heard from the governors and others that have testified, do you think that enacting your bill perhaps would be a vehicle for helping diffuse this issue?

Mr. TORRES. I do, Mr. Chairman. I think, again, at the base of all this are those that would oppose gaming for other reasons, either because they interfere with State lottery operations or because they don't want to have to allow tribes to have any competitive advantage over others to conduct gaming activities in their States—

and the law is clear in providing the provisions for Indian tribes to do this. And as I have said, if there are disagreements between the tribes and the States, the law establishes procedures for mediation or it allows the courts to get involved if the State refuses to participate altogether.

But unfortunately, again, in spite of this federal law, the States are not dealing fairly with the Indian tribes.

Mr. RICHARDSON. My colleague from Arizona, you have been very active and very successful in economic development in your district and throughout the Southwest. I guess my question is, in some of the tribes that you are familiar with in your State, are there any other viable options for economic development that you might identify? Is there a substitute for gaming?

Mr. PASTOR. As you know, there have been farming attempts, and as they become successful sometimes they can't compete with the marketplace, because of either volume or size. In addition, they have, for a number of years, attempted different economic ventures, from agriculture to cattle. But the margin of profit is very minimal. I would also concur with Congressman Torres in that I think that, when this law was passed, no one anticipated the success that the Native Americans were going to have with gaming. I think one of the issues is the competition that Indian gaming is providing with those gaming operations that the State may have.

I ask the committee to note that the gaming ventures in many of the Native American nations in my district have proven very successful.

The Fort McDowell Indians, for instance, have been able to build more houses in a very short period of time than the BIA has completed in a number of years. You begin to see the success when they take pride in saying that now we can afford to send our members to community colleges, vocational schools, or universities. Gaming helps to provide these means, and they don't have to rely on the BIA. This success needs to be acknowledged.

I think the States today are being pressured by other gambling interests to thwart or undermine this effort because Indian gaming has been so successful.

Mr. RICHARDSON. Thank you.

The Chair recognizes the gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. Torres, we are both from California, and we have special conditions different from many of the tribes throughout the United States, many of the tribes who have gambling are in more rural conditions. Would your legislation address non-contiguous ownership of property by reservations? Hypothetically, if one of the Mission Tribes of California decided to buy some property in Hacienda Heights and open a casino, in your opinion would this be allowed?

Mr. TORRES. I believe my legislation addresses itself to the tribal sovereign nations as they are on the reservations without impinging on contiguous areas of non-ownership or non-jurisdiction.

Mr. CALVERT. There are tribes, as you are aware, in California that do own land today.

Mr. TORRES. Yes.

Mr. CALVERT. In urban areas, resort areas. Do you believe that that property which has been used previously for commercial uses would be allowed to open full-fledged class III casinos?

Mr. TORRES. To my understanding, under the legislation, no, they are relegated to the reservation as defined in State statutes or federal law.

Mr. CALVERT. You are aware of the fact that the Caliente Indians in Palm Springs have entered into a tentative agreement to open a casino in Palm Springs.

Mr. TORRES. I am not, no.

Mr. CALVERT. Do you believe that that would be allowed within the present legislation of IGRA or under the proposed change under H.R. 1028?

Mr. TORRES. I am not clear on that at this point. I know the Caliente Indians do have land jurisdiction over the Palm Springs area, and there is some lease arrangement with that city. But I am not cognizant of the actual statutes in terms of their being able to carry on gaming operation per se in the city of Palm Springs.

Mr. CALVERT. Thank you.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I want to thank my colleagues for appearing today. Your testimony has been very helpful. Thank you very much.

PANEL CONSISTING OF EDDIE BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY HILDA MANUEL, STAFF DIRECTOR, INDIAN GAMING MANAGEMENT OFFICE; AND ANTHONY J. HOPE, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION, ACCOMPANIED BY JOEL FRANK, SR., SEMINOLE TRIBE OF FLORIDA AND COMMISSIONER, NATIONAL INDIAN GAMING COMMISSION, AND JANET McKEAG, CHEROKEE NATION OF OKLAHOMA, COMMISSIONER, NATIONAL INDIAN GAMING COMMISSION

Mr. RICHARDSON. Our next panel, Dr. Eddie Brown, Assistant Secretary for Indian Affairs; Mr. Anthony Hope, Chairman, National Indian Gaming Commission; Mr. Joel Frank, Commissioner, Ms. Janet McKeag, Commissioner.

Please step up to the witness table. We are going to be consolidating these panels in the interests of time, so I would like to invite our witnesses to come forward, and welcome them.

Your statements will be fully incorporated in the record, and I will ask you to summarize.

Dr. Brown, welcome to the subcommittee. You have been a witness many times for many years. We welcome you again. As always, thank you for your cooperation.

STATEMENT OF EDDIE BROWN

Dr. BROWN. Thank you, Mr. Chairman, Members of the Committee. I am appreciative of the opportunity to be here today to present an overview on the implementation of the Indian Gaming Regulatory Act of 1988.

I would like to introduce Ms. Hilda Manuel. She is an attorney by profession, a former tribal judge, and past Chief of Judicial

Services for BIA, and is our newly appointed Director of the Office of Indian Gaming Management. She will be here to assist in any questions that might be asked this morning.

I would also like to present a summary of my written statement and ask that the full text of my prepared statement be made a part of the record.

Mr. RICHARDSON. Without objection.

Dr. BROWN. Let me move as quickly as possible through this because of time. Since the early 1980s, the BIA has been involved in Indian gaming issues without the benefit of clear statutory authority outlining the BIA's role.

When IGRA was signed into law on October 17, 1988, it provided a regulatory framework for the regulation of Indian gaming activities. Primary responsibility for the regulation of class II games was placed with the tribes themselves, with oversight authority by the National Indian Gaming Commission.

At that time, the Commission and the corresponding need for regulations to define the requirements for gaming and the powers of the Commission were yet to be developed. The BIA continued to carry out its regulatory efforts for what was thought to be a short interim basis.

During this period the BIA approved gaming ordinances, management contracts, leases, financing, and construction agreements. IGRA also added additional responsibilities for the approval of tribal-state compacts, fee-to-trust land acquisitions for gaming, per capita distribution plans, and other gaming-related activities determined to require Secretarial approval.

Class III gaming was to be regulated by either the tribe or the state or jointly through the provisions of a tribal state compact. Despite the uncertain legal environment, the BIA has been able to work with the majority of tribes to comply with BIA's requirements. Approximately 170 tribes operate class II gaming enterprises. Fifty-nine tribes operate class III enterprises under approved compacts.

Now that the Commission's final set of regulations are in effect, the role of the Department and BIA will be those residual functions remaining with the Secretary. Recently, the department established the Office of Indian Gaming Management to carry out these functions which include approval of tribal-state compacts, per capita distribution plans, fee-to-trust land acquisitions for gaming purposes, approval of contracts not collateral to management contracts, and other functions inherently tied to the role of the Secretary as trustee such as providing technical assistance, financial support and training.

A staff of 15 is authorized for the gaming office. Four staff members are on board and the rest of the positions are intended to be filled by May of 1993.

Let me say, Mr. Chairman and members of the committee, in the past four years, I have personally witnessed the dynamic and exciting growth of vision and direction by Indian tribes across the country. Most impressive is the initiative by tribal governments to take the lead in providing policy development and leadership through increased participation and involvement at the federal and state

level which has presented new challenges and opportunities for Indian tribes.

While at times overwhelming and frustrating, Indian tribes have undertaken these challenges and opportunities with great determination, hope, and in most instances, success. I have visited factories, lumber mills, construction companies, power plants, waste management operations, farming enterprises and other economic development measures which attest to tribal determination and self-sufficiency.

In States where tribes have successfully negotiated compacts, Indian gaming has become a major source of revenue for the otherwise financially strapped tribal governments. This morning I think we have heard very eloquent examples of instances where tribes have met those needs.

Unfortunately, tribal efforts to better the economic conditions of tribal communities by operating gaming enterprises have presented the most contentious and frustrating challenges that the tribes and BIA have faced today. However, despite the difficulties experienced in implementing the requirements of IGRA, the Department agrees with most tribes that solutions are possible.

As a matter of federal policy, the Department supports Indian gaming as a viable economic development activity. While the Secretary has indicated his support for tribal gaming efforts, he is sensitive to the implications inherent in the conflicts between the tribes and the States.

As such, the Department and BIA will work with tribes and the States to encourage cooperative working relationships, but more importantly, to ensure that tribal sovereignty is protected and gaming is preserved as an acceptable means of generating tribal revenue.

It should be recognized that the Department's role in this regard will be more limited now that the Commission is in operation. It will, however, continue to take into consideration the general trust obligations of the Secretary for the benefit of the tribes.

Our efforts will also include working cooperatively with the Commission, the Inspector General, the Department of Justice, and the U.S. attorneys throughout the country to the extent that the Department's involvement is needed and requested.

This concludes my prepared statement. I would be pleased to answer any questions you or members of the committee might have.

[Prepared statement of Dr. Brown follows:]

STATEMENT OF DR. EDDIE F. BROWN, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, FOR THE OVERSIGHT HEARING ON THE IMPLEMENTATION OF THE INDIAN GAMING REGULATORY ACT.

April 2, 1993

Good morning Mr. Chairman, and members of the Committee. I am pleased to be here today to present an overview on the implementation of the Indian Gaming Regulatory Act of 1988 (IGRA).

Since the early 1980s, the Bureau of Indian Affairs (BIA) has been involved in Indian gaming issues without the benefit of clear statutory authority outlining the BIA's role. In 1984, the BIA issued guidelines to the BIA Area Directors to provide guidance for the review and approval of bingo management contracts, leases, ordinances and other gaming-related agreements. The guidelines were revised in 1985 and 1986 but did not contemplate the development of new forms of high tech gambling nor the rapid expansion of gaming. In March 1992, after it became apparent that many of the tribes had expanded their bingo games to include new games being promoted as facsimiles of bingo, the BIA issued revised guidelines to cover the many gaming-related activities subject to BIA regulations.

The IGRA was signed into law on October 17, 1988, and provided a regulatory framework for the regulation of Indian gaming activities. Primary responsibility for the regulation of Class II games (bingo and related games) was placed with the tribes themselves with oversight authority by the National Indian Gaming Commission (NIGC). The delay in making appointments to the NIGC and the need for regulations to define the requirements for gaming and the powers of the NIGC required the BIA to continue its regulatory efforts on an interim basis. During this period the BIA approved gaming ordinances, management contracts, leases, financing, and construction agreements. The IGRA added additional responsibilities for approval of tribal-state compacts, fee-to-trust land acquisitions for gaming, per capita distribution plans and other gaming-related activities determined to require Secretarial approval. Class III gaming (most other gaming including slot machines, electronic devices, blackjack and roulette) was to be regulated by either the tribe or the state or jointly through the provisions of a tribal-state compact.

Despite the uncertain legal environment and the resistance of some tribes to the BIA's efforts to monitor and regulate tribal gaming activities, many tribes complied with the BIA's requirements. Approximately 170 tribes operate Class II gaming enterprises; 59 operate Class III enterprises under approved compacts.

Now that the NIGC's final set of major regulations are in effect, the role of the Department/BIA will be those residual functions remaining with the Secretary. These include approval of tribal-state compacts, per capita distribution plans, fee-to-trust land acquisitions for gaming purposes, approval of contracts not collateral to management contracts, and other functions inherently tied to the role of the Secretary as trustee.

As Assistant Secretary these past almost four years, I have personally witnessed a dynamic and exciting growth of vision and direction by Indian tribes across the country. Most impressive is the initiative by tribal governments to take the lead in providing policy development and leadership through increased participation and involvement at the Federal and state level which admittedly has presented new challenges and opportunities for Indian tribes. While at times overwhelming and frustrating, Indian tribes have undertaken these challenges and opportunities with great determination, hope, and in many instances, success.

I have visited factories, lumber mills, construction companies, power plants, waste management operations, farming enterprises, and other economic development ventures which attest to tribal determination and self-sufficiency.

In states where tribes have successfully negotiated compacts, Indian gaming has become a major source of revenue for the otherwise financially strapped tribal governments. Tribes in Minnesota, Wisconsin, the Dakotas, Iowa, and other states, have used gaming revenues for construction of new homes, repairs, senior citizen housing, for educational scholarships, construction of new school facilities, for health care programs, new medical facilities, and for long-term economic development investments. Tribes have also made contributions to local governments for roads, schools, police protection, and social service programs from gaming revenues. Unfortunately, tribal efforts to better the economic conditions of their communities by operating gaming enterprises have presented challenges in some states.

The government-to-government relationship envisioned by Congress to promote tribal-state cooperation in the regulation of Class III gaming did not always develop easily. In some cases, it has resulted in highly-publicized conflicts and protracted litigation.

These conflicts have created a major disincentive for tribes and states to seek and complete compact negotiations with one another. Tribes are looking to the Secretary for solutions while the states are looking to Congress. In a recent national meeting, 49 of the 50 state governors voted to adopt a resolution calling on Congress to amend the IGRA to clarify several provisions which in their opinion, have led to counter-productive conflicts. The issues at the heart of the conflict involve the scope of gaming to be authorized, the allocation of regulatory jurisdiction, the standard of "good faith" to be applied and, an expansion of the consultation process

for acquisition of non-contiguous lands intended for gaming. The Governors also seek a moratorium on compacts pending the resolution of conflicts or amendment of the IGRA.

With the passage of the IGRA, most assumed that implementation of the Act's requirements would be easily accomplished. It was expected that the NIGC would be established quickly and regulations defining the scope of gaming allowed would be developed immediately, followed by other regulations the NIGC would require to begin operation. Few appreciated the economic pressures tribes would face to take advantage of gaming as an important alternative means of raising revenue to alleviate the depressing poverty on Indian reservations. Congress itself did not foresee the implications and the rapid expansion of high stakes gambling and consequently, did not allow adequate time for establishment of the regulatory process. Despite the difficulties experienced in implementing the requirements of the IGRA, the Department agrees that solutions are possible.

As a matter of Federal policy, the Department supports Indian gaming as a viable economic development activity. While the Secretary has indicated his support for tribal gaming efforts, he is sensitive to the implications inherent in the conflicts between the tribes and the states. As such, the Department and the BIA will work with tribes and the states to encourage cooperative working relationships and to insure that tribal sovereignty is protected and to preserve gaming as an acceptable means of generating tribal revenue. It should be recognized that the Department's role in this regard will be more limited now that the NIGC is in operation. It will continue to consider the general trust obligations of the Secretary for the benefit of the tribes.

The Department/BIA will also continue its efforts in providing technical assistance, support or training to tribes in addition to carrying out the duties reserved to the Secretary by the IGRA. Our efforts will include working cooperatively with the NIGC, the Inspector General, the Department of Justice and the U.S. Attorneys throughout the country, to the extent the Department's involvement is needed or requested.

This concludes my prepared statement. I would be pleased to answer any questions you or a member of the Committee may have.

Mr. RICHARDSON. Thank you, Dr. Brown.

The Chair recognizes the Chairman of the National Indian Gaming Commission, the Honorable Anthony Hope.

Let me say, Chairman Hope, I enjoyed my visit with you and Commissioner McKeag the other day. Please proceed.

STATEMENT OF ANTHONY J. HOPE

Mr. HOPE. Thank you, Mr. Chairman.

With me today are Commissioner Jana McKeag of the Cherokee Nation of Oklahoma and Commissioner Joel Frank, Sr., of the Seminole Tribe of Florida.

I will summarize my remarks and request that my full remarks be entered into the record.

In summarizing my remarks about the IGRA, or the Indian Gaming Regulatory Act, I am simply going to emphasize two sentences of what I was going to say.

The Commission conducts background investigations of entities and individuals with a financial interest in or management responsibility for class II management contracts, but not for class III management contracts. The regulation of class III gaming is as agreed in the compacts negotiated by the tribes and the States.

Mr. Chairman, it was two years ago next week that Jana McKeag was appointed Commissioner and the Commission commenced its promulgation of regulations as required by IGRA and the Administrative Procedures Act. It is true the IGRA was passed in October 1988, but I was the first employee of the Commission, and I was not confirmed by the Senate nor did I commence service until May of 1990. The two Commissioners were appointed by Secretary Lujan over the next 11 months.

My experience is basically in law and federal regulation. Commissioner Joel Frank's expertise is in tribal governmental systems, including gaming, and the meshing of these systems with federal program requirements. Jana McKeag brings experience in agencies, here on Capitol Hill, and in liaisons with tribes and tribal leaders.

I have always felt the three of us have sufficient experience in government and the private sector to get the job done well.

We have been chipping away at the regulatory process and at the same time we have visited over 75 gaming operations. We have worked with the FBI, the IRS, and the U.S. Attorneys to develop background procedures for information sharing, the conduct of background investigations, and the coordination of enforcement procedures.

We have met as well with the Conference of Western Attorneys General, the National Association of Attorneys General, the National Governors' Association, and the Attorney General's Advisory committee on Indian Issues and the Indian section of the American Bar Association.

However, our number-one priority has been the promulgation of regulations which implement the provisions of IGRA. This has enabled the Commission to become operational as quickly as possible.

We divided IGRA into six components: fee assessments; definitions; tribal ordinances; compliance and enforcement; management contracts; and self-regulation. Five of these six are in place and the remaining one will be in place by September. Although our basic

regulatory framework is in place as of February 22, when our regulations became law, we are still working on three new sets of regulations which will finalize the requirements under different portions of administrative regulations.

Now that we are operational, let me summarize what we are going to spend the next six months doing. We are continuing to build our staff. We have recently hired 3 new people for our field operations, bringing our total staff to 17. When fully staffed, we expect to have 25 full-time employees based on the \$3 million funding ceiling contained in the IGRA.

As we hire field personnel, we are also hiring experts in financial analysis and investigations for our Washington office. We are training our field representatives in our regulations and in the law, sending them out on visits to the tribes. We expect that the field personnel will visit all tribal gaming operations by September.

On some of these visits, they will be accompanied by a commissioner or by myself. The purpose of these first meetings is to acquaint the tribal leadership with the gaming responsibilities under the IGRA and to observe and gather information about the tribe and its gaming operations.

Our current estimate is that there are about 175 tribes operating 200 gaming operations, class II, class III, or both. The Commission is charged with reviewing and approving the tribal ordinances for each of these tribes, as well as any new ordinances adopted.

We expect by September to have reviewed 100 new and existing ordinances. The review and approval of these ordinances is important for three reasons: Their approval activates two federal criminal statutes which concern theft from Indian gaming establishments. Their approval triggers the requirement that the tribes conduct background examinations on the key employees and primary management officials of the on-site gaming operation. Finally, their approval triggers the requirements for an annual independent audit to be conducted.

The Commission is charged with approving all class II and class III management contracts and with determining the suitability of owners of management contracts for all class II gaming operations. The Commission has begun to receive new management contracts for review and approval and will shortly begin to call in existing contracts.

By September, we expect to have reviewed and acted on 25 contracts and made suitability determinations on 200 of the 500 or more individuals who are by then expected to have made application to the Commission as owners of management companies.

Some of these background checks will be done quite rapidly while others may take more than six months to complete. The Commission expects to initiate enforcement actions in the next six months.

It would be inappropriate for me to identify particular targets at this time, but I can say that there are two areas of primary concern to us. First, those tribes which have refused to pay their annual fees; and second, those tribes' contractors operating without an approved contract.

It is the stated policy of the Commission to work with the tribes to obtain compliance with the IGRA, the Commission's regulations and the tribes' ordinances. We believe our approach is in the long-

term best economic interests of the tribes and vital to the achievement of tribal self-sufficiency.

The Commissioners and I will be happy to answer any of your questions.

Thank you very much.

[Prepared statement of Mr. Hope follows:]

TESTIMONY OF

ANTHONY J. HOPE

CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

BEFORE

THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

APRIL 2, 1993

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today. My name is Tony Hope. I am the Chairman of the National Indian Gaming Commission. With me today are Commissioner Jana McKeag of the Cherokee Nation of Oklahoma and Commissioner Joel M. Frank, Sr. of the Seminole Tribe of Florida.

The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted as a response to the proliferation of tribal gaming establishments in Indian Country operating without regulatory oversight by either the federal government or the states. The IGRA provides a regulatory framework for regulating Indian gaming by dividing gaming into three (3) classes, establishing the National Indian Gaming Commission to oversee the regulation of class II gaming, and authorizing Indian tribes and states to enter into compacts for the regulation of class III gaming.

Class I gaming (social games or traditional tribal games played in connections with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes. Class II gaming (bingo, pull-tabs and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission. Class III gaming (all other gaming, including horse racing, blackjack, roulette, slot machines lotteries and craps) is regulated under the terms of a compact between the tribe and the state.

The Commission is a three-person regulatory agency administratively located within the Department of the Interior. Under the IGRA, the Commission's primary role is to monitor and regulate class II gaming operations. The Commission also approves class III tribal gaming ordinances and management contracts and has the authority to impose civil penalties or to close a gaming establishment for substantial violations of the IGRA, the regulations promulgated by the Commission, or tribal gaming

ordinances. The Commission conducts background investigations of entities and individuals with a financial interest in, or management responsibility for class II management contract, but not for class III management contracts. The regulation of class III gaming is as agreed in the compacts negotiated between the tribes and the states.

Mr. Chairman, it was two years ago next week that Jana McKeag's appointment as a Commissioner became effective and the Commission commenced its promulgation of regulations as required by the IGRA and by the Administrative Procedure Act. It is true that the IGRA was passed in October 1988, but I was the first employee of the Commission and I was confirmed by the Senate and started service in May of 1990. The two Commissioners, appointed by former Secretary Lujan, provided the Commission with the broadest possible base of experience. My experience is in law and federal regulations. Joel Frank's expertise is in tribal governmental systems, including gaming, and the meshing of these with Federal program requirements. Jana McKeag brings twenty years experience in government in the Department of the Interior, other federal agencies, on the Hill and in liaison with tribes and tribal leaders. I have always felt that the three of us have sufficient experience in government and the private sector to get the job done well.

While we have been diligently chipping away at the regulatory process, we have also been engaged in many other pre-operational endeavors. We have visited over 75 Indian gaming operations. We have successfully defended lawsuits challenging our regulations and our very existence. We have worked with the FBI, the IRS, and U.S. Attorneys to develop procedures for information sharing, the conduct of background investigations and the coordination of enforcement procedures.

As regulators, we meet regularly with individuals and organizations to discuss our respective roles and responsibilities in Indian gaming. These include the numerous gaming tribes and associations, as well as the Conference of Western Attorneys General, the National Association of Attorneys General, the National Governor's Association, the Attorney General's Advisory Committee on Indian Issues, and the Indian Section of the American Bar Association.

Our number one priority has been the promulgation of regulations which implement the provisions of the IGRA. This has enabled the Commission to become operational as quickly as possible. The Commission divided the IGRA into six regulatory components: 1) fee assessments; 2) definitions; 3) tribal ordinances; 4) compliance and enforcement; 5) management contracts; and 6) self-regulation. On August 15, 1991, the Commission published its final rule on the procedures to be followed by class II gaming operations to compute and remit on a quarterly basis the annual fee required to be paid to the Commission. On April 9, 1992, the Commission published final regulations defining the major terms used in the IGRA, including the definitions for class II and class III gaming. Finally, on January 22 of this year, the Commission published its final regulations on the review and approval of tribal gaming ordinances, the review and approval of management contracts, and compliance and enforcement. This last set of regulations took effect on February 22, 1993 and means that the Commission can now begin its operational phase.

Although our basic regulatory framework is in place, we are still working on three sets of regulations: Freedom of Information Act (FOIA) Procedures, National Environmental Policy Act (NEPA) Procedures, and the rule on self-regulation. We expect all to be in final by the end of September.

Let me summarize our program for the next six months. We are continuing to build our staff. We have recently hired three people for our field operations, bringing our current total to 17. When fully staffed, we expect to have 25 full-time employees based on the \$3 million funding ceiling contained in the IGRA. As we hire field personnel, we are also hiring experts in financial analysis and investigations for our Washington office. We are training our field representatives in our regulations and the law and sending them out to visit the tribes. We expect that the field personnel will visit all tribal gaming operations by September. On some of these visits they will be accompanied by a Commissioner or myself. The purpose of these meetings is to acquaint the tribal leadership and the gaming management of their responsibilities under the IGRA, and to observe and gather information about the tribe and its gaming operations.

Our current estimate is that there are about 175 tribes operating 200 gaming operations, class II, class III or both. The Commission is charged with reviewing and approving the tribal ordinances for each of these tribes, as well as any new ordinances adopted. We expect by September to have reviewed 100 new or existing ordinances. The review and approval of these ordinances is important for three reasons: 1) their approval activates two

federal criminal statutes which concern theft from Indian gaming establishments; 2) their approval triggers the requirement that the tribe conduct background investigations on the key employees and primary management officials of a gaming operation; and 3) their approval triggers the requirements for an annual, independent audit.

The Commission is charged with approving all class II and class III management contracts, and with determining the suitability of owners of management contracts for all class II gaming operations. The Commission has begun to receive new management contracts for review and approval, and will shortly begin to call in existing contracts. By September, the Commission expects to have reviewed and acted on 25 contracts and made suitability determinations on 200 of the 500 or more individuals who by then are expected to have made application to the Commission as owners of management companies. Some of these background checks will be done quite rapidly while others may take more than six months to complete.

The Commission expects to initiate enforcement actions in the next six months. It would be inappropriate for me to identify particular targets at this time, but I can say that there are two areas of primary concern to us: First, those Tribes which have refused to pay their annual fees (currently computed at three-quarters (.75) of one percent of assessable gross revenues) and whose share of the fees is being unfairly borne by tribes who have been willing to pay, and second, those contractors operating without an approved contract.

It is the stated policy of the Commission to work with the tribes to obtain compliance with the IGRA, the Commission's regulations, and the tribes ordinances. We believe that this approach is in the best long term economic interest of the tribes, and vital to achievement of tribal self-sufficiency. The Commissioners and I will be happy to answer any questions.

Thank you.

Mr. RICHARDSON. Thank you, Mr. Chairman.

Do the Commissioners wish to add anything or are you prepared to answer questions?

Ms. McKEAG. I don't want to add anything at this time, Mr. Chairman.

Mr. RICHARDSON. Thank you.

Dr. Brown, you have had the unique experience since you have been Assistant Secretary. I think you have been the longest Assistant Secretary that I remember in terms of tenure, seeing the birth and growth of Indian gaming under the Act. How does Indian gaming compare to economic development programs in the BIA? Where will we find additional revenues to replace the revenues tribes realize through Indian gaming?

Dr. BROWN. Let me say that Indian gaming is by far one of the most successful economic development ventures that are occurring for tribes today. It has been very successful, I think, far beyond anyone's imagination since 1988 when the law was passed. It has proven to be, as I said, very successful and has been able to provide a great deal of resources for the community.

Some of those cases are where tribes are using those resources to begin to look at other economic development ventures and beginning to see how they might finance, not only within their tribes, but with other tribes in addition to looking at other operations. I think that how to expand will be a challenge for tribes in the future.

I am not of the opinion that tribes are saying gaming is the only thing they want to do, nor is gaming the only successful economic development venture, however, it is by far the most successful at this time.

Mr. RICHARDSON. The Chair recognizes the gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman.

Law enforcement. The courts have barred local sheriffs from enforcing its laws. The Department of Justice says it is a Department of the Interior issue and the Department of the Interior says it is a Department of the Justice issue. What can be done to alleviate that?

Dr. BROWN. We have taken the position that we are not under the authority of an enforcement agency and we have worked closely with our area directors and our criminal investigators at the local level.

Whenever there is a report of wrongdoing or crime, we have been able to work and report that to the local authorities or the State authorities, or the FBI, whichever was appropriate. In a number of situations we have been able to work cooperatively in seizing illegal machines or closing down illegal operations. However, there seems to be some concern as to just who has the ultimate authority in law enforcement.

I think while there has been some concern about stronger regulations, it is clear, in our mind at least, that there needs to be a clear statement of just what law enforcement agency has the ultimate responsibility as well as the personnel and staff to accomplish that task.

Mr. CALVERT. Thank you.

Mr. Hope, an issue of regulation and oversight of the gaming operations throughout the United States, how many people do you have on your staff working with you today?

Mr. HOPE. For oversight of class II gaming, which is the bingo halls, we currently have a staff of 17. We are in the process of expanding to a staff of 25.

Mr. CALVERT. And on class III gaming, what process of oversight do you know of that is in existence today?

Mr. HOPE. The act calls for jurisdiction of class III gaming to be in the compact between the tribes and the States.

Mr. CALVERT. Are the States as far as you know regulating class III gaming where the class III gaming exists?

Mr. HOPE. All of them purport to be. I know that some of them are doing well. Others, I am not sure. I don't have information on that. It is not within my jurisdiction.

Mr. CALVERT. Are you not able to do background checks and investigate individuals who are getting involved in class III gaming anywhere in the United States?

Mr. HOPE. That is a difficult question. In general, we expect that many of the people who are involved in class III gaming on Indian reservations will also be involved in class II gaming so there will be some overlap of jurisdiction and we will get a look at them.

In straightforward class III situations, the Commission's role is the approval of the tribal ordinance and the approval of the management contract, which is essentially limited to the sufficiency of the contract under the terms of the law, the percent distributions, the accounting methods, annual reports, reporting to the tribes, et cetera. But it does not concern the background of the owners of the management company.

Mr. CALVERT. It seems that at the very least there is some difficulty in law enforcement on class III and on class III there is some confusion over regulation, confusion in the fact that you are not given the jurisdiction to have oversight on class III gaming operations. What would you suggest Congress should do to alleviate that type of situation?

Mr. HOPE. It is a very difficult decision because any recommendations are going to be politically sensitive and basically the Department of the Interior, I expect, will have the Administration's position on those issues and I hesitate to speak for Secretary Babbitt.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. RICHARDSON. Let me ask Dr. Brown, What is the process in the BIA for an Indian tribe to bring non-contiguous lands into trust status? Does an affected State have an opportunity to be heard in this process, and if it does, how does that happen?

Dr. BROWN. Mr. Chairman and members of the committee, there are basically two processes outlined in law. One is found in the Code of Federal Regulations in Part 151 that lays out just taking land into trust, which we have done for many years. However, when the Indian Gaming Regulatory Act was passed, it included a section 20 which added additional review requirements for a tribe's taking lands into trust for gaming purposes. Within both of those regulations are requirements that call for participation and input from the communities, from the local governments, and State gov-

ernments. So if a tribe is taking land into trust for general purposes there is a process. We have regulations that are currently being reviewed by the new Administration which we hope to get out within the near future. These regulations outline more specifically land acquisitions in regard to CFR 151 and section 20 requirements.

Mr. RICHARDSON. Is the concurrence of a governor required to place land into trust for purposes of conducting gaming? For instance, you have heard the governors this morning. Do you think more is required to adequately protect the States in this connection?

Dr. BROWN. It is being reviewed and what we have found is that in section 20, the concurrence of the governor is required for gaming on newly acquired land.

Mr. RICHARDSON. Is it your opinion that the States are going out of their way to avoid class III gaming? What if they simply followed the Act as opposed to invoking the tenth and eleventh Amendments; do you think these things could be worked out?

Dr. BROWN. Yes. I believe, and Secretary Babbitt has also indicated, that we feel, and we are prepared to do whatever we can within the Department to help facilitate a solution. We believe a process is there and has broken down. We believe that with more dialogue, and working with tribes and States, that this is a process through which State and tribal agreements can be reached.

Mr. RICHARDSON. Chairman Hope, you heard some of the testimony earlier suggesting that State representatives be included on the Commission. Would you care to comment on this? Would you have a position on that?

Mr. HOPE. Yes. I think that it fails to a certain extent to understand the Act and its intricacies. We have been working with this Act now for three years. Most of the activities undertaken by the Indian Gaming Commission are undertaken by the Chairman. The Commission serves as essentially a court of appeals for those who feel that the Chairman's decision was incorrect. The decisions by the Chairman will essentially involve class II gaming, over which the States do not have jurisdiction.

The Commission does not have jurisdiction in those areas where the State does. So I don't see what end will be served by adding State representatives onto the Commission.

Mr. RICHARDSON. I am going to continue asking questions, but I will recognize the gentleman from California. We do have a journal vote and I do want to complete this panel. The gentleman is recognized.

Mr. CALVERT. Thank you. Back to the issue of non-contiguous lands, Dr. Brown, land that is presently owned by Indian tribes in urban areas that hasn't been used for the use of the tribe in many years. Would you believe that under IGRA that that plan would be used for gambling purposes, class III gambling purposes or class II gambling for that matter.

Dr. BROWN. I will ask Hilda Manuel to respond to that since she has recently worked in that.

Ms. MANUEL. You are basically asking whether land that the tribe currently owns but is in fee and not in trust, can be used for gaming?

Mr. CALVERT. Yes.

Ms. MANUEL. The tribe would more than likely ask that it be put into trust. If the land is contiguous or within the existing or former reservation and it is not non-contiguous, we would have to review the historical information to determine whether section 20 requirements requiring consultation and concurrence would have to be satisfied. There are some exceptions in section 20 under circumstances where section 20 requirements would not apply.

Mr. CALVERT. If that land is located in an urban area, would the Act provide that the tribe in question must follow local land use guidelines?

Ms. MANUEL. Under the Part 151 land acquisition regulations in 25 CFR, there is a requirement, among other things, that the tribe take into consideration; there should be some documentation of the impacts on zoning and jurisdictional land use. Those considerations would have to be taken into account.

Mr. CALVERT. So if the property is not properly zoned for that particular use, then it is your opinion that class II or class III gambling would not be allowed on that property even if it is in trust?

Ms. MANUEL. No. I am saying that the tribe would have to comply with whatever the zoning or land use requirement is. If they are not successful in obtaining approval by the local city or the governmental entity, that is a factor that we would take into account when the application comes into the office.

Mr. CALVERT. So if the State or if the county or the city, whatever the jurisdiction may be, if they find that the land use is not consistent with the type of use that is proposed, then it is your opinion that that use would not be allowed on that property?

Ms. MANUEL. We would certainly look at it to determine whether there was absolutely no way that the parties could come to some agreement to mitigate whatever the problem would be because there are other factors that we are required to look at in addition to the land use criteria.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. RICHARDSON. Chairman Hope, class II as regulated by the Federal Government seems to be working fine. In retrospect, do you think class III should have been federally regulated as well?

Mr. HOPE. I am not sure, Mr. Chairman. From purely a regulators's standpoint, and this is my own opinion, class II gaming is gaming where the house doesn't really care who wins or loses. The house essentially operates as a traffic cop over the players. In class III gaming, the players essentially play against the house, like in blackjack.

It has generally been the regulatory experience of different bodies that class III gaming needs regulation at the local level. It needs hands-on close ties to the operators. And if there were to be a federal program, it would have to take that into consideration and locate itself near the gaming to be conducted. I don't think that this is necessary for class II gaming, which we plan to operate from Washington with some local people.

Mr. RICHARDSON. Now that the regulations are complete, how has your role changed as a Commission? What is your role, for instance, with management contracts?

Mr. HOPE. Heretofore, we have not had a role with management contracts. The jurisdiction for management contracts remained in the Department of the Interior with their old section 81 authority until our regulations became final. At this point, we are now receiving new management contracts and we will be calling in existing management contracts to approve and to bring into compliance with the requirements of the Act.

Mr. RICHARDSON. Perhaps one of your two commissioners might want to respond. You have heard allegations that Indian gaming isn't regulated. How would you respond, Commissioner McKeag?

Ms. McKEAG. There are several levels of regulation. I think that tribes have a regulatory structure which is very often overlooked. I just want to add to Mr. Hope's statement that one of our principal responsibilities in calling in and reviewing both existing and new management contracts is conducting background investigation on owners. That is a very critical aspect, particularly in the concern that Mr. Calvert has about deterring crime on Indian reservations or in gaming operations.

Mr. RICHARDSON. Commissioner Frank?

Mr. FRANK. Mr. Chairman, I take the position that the tribes are regulating and they have been regulating since the gaming was authorized within their own reservations. As governments, I think that there are ordinances which the Bureau can attest to in terms of approving ordinances authorizing gaming on the reservation. For those reasons, I believe that there has been regulation that may be different from what we have come up with from IGRA.

Mr. RICHARDSON. Dr. Brown, since you are the purveyor of this entire Act, was it a good idea to compact with the States or do you think the Federal Government should have kept its role as a traditional trustee and protector of Indian lands, in retrospect?

Dr. BROWN. There are pluses and minuses for both. It is important on a local level in a government-to-government relationship between tribal governments and State governments to create a forum by which agreements can be reached at a local level. Clearly, the gaming operations will have an impact as shown not only for the reservation but for the surrounding area as well.

It is important that tribal governments are able to sit as a government with State governments and negotiate local agreements on what is best for both governments and the population being served. So while it has created some confusion and concern, I think it is a move that will be reflected in many other situations where tribal governments will be working with State governments to reach agreements, with the understanding that the development of any State is a shared responsibility of both to be worked out at a local level. So I would consider that a good move and I think in the future it will become even stronger, hopefully.

Mr. RICHARDSON. Do you think we should have divided up these responsibilities by class II and class III?

Dr. BROWN. That is hard for me to say. Maybe I can ask Ms. Manuel here what her feeling is since she has been directly involved in that.

Ms. MANUEL. What was the question; I am sorry?

Mr. RICHARDSON. I am going to ask you to submit that answer for the record, the reason being that there are three minutes before the next vote.

[Editor's note.—The information was not provided at the time of printing.]

Mr. RICHARDSON. I want to thank this panel. The hearing will resume in 10 minutes. Thank you very much.

[Recess.]

PANEL CONSISTING OF DEBORAH DOXTATOR, VICE CHAIRPERSON, ONEIDA TRIBE OF INDIANS OF WISCONSIN; JAMES M. MURRAY, PH.D., COMMUNITY ECONOMIC DEVELOPMENT SPECIALIST, UNIVERSITY OF WISCONSIN, COOPERATIVE EXTENSION; MYRON ELLIS, CHAIRMAN, MINNESOTA INDIAN GAMING ASSOCIATION; AND CHARLES KEECHI, CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION

Mr. RICHARDSON. The hearing will resume. We would like to invite to the witness table the Honorable Deborah Doxtator, Vice Chairperson of the Oneida Tribe of Indians of Wisconsin; James M. Murray, Community Economic Development Specialist, University of Wisconsin; the Honorable Myron Ellis, the Chairman of the Minnesota Indian Gaming Association; and the Honorable Charles Keechi, the Chairman of the National Indian Gaming Association. We want to welcome you.

As you know, we will include your statement in the record and we will ask you to summarize in 5 minutes.

I want to apologize for the votes. We may have a continued series, and I would like to just thank everybody for their patience. I would like to recognize the Honorable Deborah Doxtator, Vice Chairperson of the Oneida Tribe of Indians of Wisconsin.

STATEMENT OF DEBORAH DOXTATOR

Ms. DOXTATOR. Good morning, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to come before you this morning.

The American Indian people are facing their toughest economic battle. At stake is the future of Indian gaming. Recently, all of the country State Governors, except the Kansas Governor, Joan Finney, have united in their fight to end Indian gaming. After meeting with Interior Secretary Bruce Babbitt, 49 Governors have declared plans to avoid the original intent of the Indian Gaming Regulatory Act of 1988. Governor Finney bravely stood alone in support of tribes. Secretary Babbitt said he will support tribes, too.

States are calling for amendments to the Indian Gaming Regulatory Act that could have devastating effects throughout the country. States are increasingly positioning themselves as obstacles to prevent tribes from conducting gaming operations. Tribes that want to use gaming as an economic development tool face a variety of opposing tactics from States that include legal theories regarding the tenth and eleventh Amendments, procedural delays, bad faith negotiations, changing laws regarding gaming, and efforts to amend state constitutions to limit gaming.

States continue to use unsubstantiated charges to defend their position to amend to the Indian Gaming Regulatory Act. Indian

gaming is not out of control. There is no organized crime, disorganized crime or reorganized crime on reservations. The only real crime we face is economic oppression on our land. And in some cases, States have caused delays for tribes while they find their way into the gaming marketplace.

I wanted to respond briefly to some of the statements made by Representative Hoagland earlier about economic development and providing dollars for education and economic initiatives.

I would like to pose a question as to what examples they can share where there have been any successes that can come near the extent of what gaming has done for Indian reservations, and what bills are presently under consideration that could provide more economic development initiatives for tribes, what is on the table at this point in time.

Tribes have had public policy thrust upon them for over 200 years and we are in a position where we won't tolerate it any more. It is unfortunate that this has taken such an incident for States to be put in a position where they can empathize with tribal governments because of laws and policies being imposed upon them. This is something we have suffered with for many years.

By some miracle, we need to help the governors understand the importance of Indian gaming. The consequences of their actions will be devastating. Their actions will destroy our hopes and be a clear path to economic oppression throughout Indian country.

In Oneida, we never dreamed that we could become one of our area's top employers, but that is what we are doing today by employing 1,700 Indian and non-Indian people. Our success is all due to Indian gaming. Thirty percent of our employees are non-Indian, and we have a \$26 million annual payroll. We started a small stakes bingo in 1976 with 150 employees. Today, our gaming activities have grown into a multimillion-dollar operation and we are turning our dreams into reality.

At the present time the Oneida Tribe is providing the following economic impacts in the Brown County area. In 1992, we added \$40 million worth of economic base to the Brown County area. We added \$200 million in added spending on labor and goods and services. We have a \$300 million to \$350 million projection in added spending on labor and goods and services. We have provided 2,200 non-tribal jobs in the Brown County area, and we have allocated \$28 million to support tribal programs.

In the future, we are expecting to provide \$60 million in projected economic base in the Brown County area in 1997. We plan on having 3,000 jobs in the Brown County area in 1997, and we would be adding \$50 million in new spending and over 500 jobs from gaming-related construction spending over the next five years.

We also plan on having \$40 million to \$50 million to support tribal programs and services for the community. Our gaming revenues have supported numerous other projects in retail services and manufacturing that are being initiated through our tribe in partnership with our local county and private and public sectors.

We are among the few tribes who are doing well. Other tribal leaders still face reservations where economic development remains untouchable. That is why Congress approved the Indian Gaming

Regulatory Act, to help tribes build economies, promote strong tribal government and self-sufficiency.

But there are many tribes that haven't been able to successfully negotiate gaming compacts with States. Without a compact, tribes can't develop gaming operations. Those tribes face long court battles against States while their homeland economies suffer.

Indian gaming works. For tribes, it is the key to building reservation economies. States need to work cooperatively with tribes, listen to our concerns and understand our needs. Instead, they fight our efforts to build our communities.

Indian gaming has helped tribes where Federal, State and local governments have failed for the past 200 years. Tribes have survived relocation and termination policies. We must find a way to survive and win this fight.

Therefore, we are recommending the following to assist the committee in dealing with the Indian gaming issue. We ask that the subcommittee help set up regional meetings between Governors and Indian nations of their respective States in order to promote a better understanding of Indian gaming.

We ask support of the subcommittee to have the Department of the Interior and Secretary Babbitt request the Department of Justice to intervene on behalf of Indian tribes in the tenth and eleventh amendment cases currently before federal court.

We ask support for maintaining the dialogue between the tribes and Secretary Babbitt be continued. This dialogue must be kept equal to the level of access with other governmental officials.

We ask support and assistance for Indian leaders to gain a meeting with President Clinton. We ask that the impact on tribal economies and the economies of local non-tribal areas be monitored and reviewed with respect to the benefits of Indian gaming.

And we ask for support in the realization that Indian gaming needs to be tied to the national economic stimulus package, if not by amendment, in spirit. Tribes are creating jobs and bolstering the economy without costing the taxpayer one buffalo head nickel. The economic benefits of Indian gaming need to be tied to the intent of this package.

Should amendments to the Indian Gaming Regulatory Act be proposed, we request that the following be observed: that there be a preservation of the economically competitive advantage established under the original passage and intent of the Act for Indian tribes; that the Act ensure a tribe's ability to attempt to reach the position of self-determination; that the Act ensure a tribe's ability to regulate their own gaming operations; and finally that the Act preserve the Federal-tribal relationship to remain consistent with the Federal Government's trust responsibility to Indian tribes.

I believe that Indian gaming is an investment in America. Gaming has transformed depressed reservation communities into thriving economic centers. Oneida gaming revenues are used solely for governmental purposes. No one person gets rich. Gaming revenues fund a variety of services that include tribal police protection, child care centers, education, schools, expanded health care, loans, counseling and other human services, recreation programs, library, sewer and water systems, affordable housing. Funds for these basic

services that residents in non-Indian communities take for granted are provided through Indian gaming revenues.

More importantly, we can provide these kind of services independent of local, State or Federal tax-funded programs or grants. For our people, the benefits are many without draining revenues from the U.S. economy, but there are forces that want to take this away. There is pressure from States to undermine Indian gaming.

Mr. RICHARDSON. Please summarize because we have to stick to the five minutes.

Ms. DOXTATOR. We would like to see this a part of the President's economic stimulus package because it really is a plan that can help stimulate the economy here in the United States, and we would like to be in partnership in doing that. Thank you.

[Prepared statement of the Oneida Tribe, and attachments follow:]

Subcommittee on Native American Affairs
of the
House Natural Resource Committee

Testimony Presented by:

Richard G. Hill, Chairman
Oneida Tribe of Indians of Wisconsin
April 2, 1993

TESTIMONY ON THE IMPLEMENTATION
OF THE
INDIAN GAMING REGULATORY ACT OF 1988

The status of gaming is the most significant economic question facing tribes as they look to their future. As challenges arise to the continued sovereignty of the tribes, to their economic stability, and the economies of the communities which surround them, the tribes are coming forward and demanding equal access to the Clinton Administration. The impact of gaming cannot be overstated. As Chairman of the Oneida Tribe of Indians of Wisconsin, I note that the 11,000 members of our nation, 4,000 of whom reside on or near the reservation, deserve a quality of life experienced by others in our state and country. As a resident of Wisconsin, I contend that we cannot afford to lose 4,000 Wisconsin jobs and watch billions of dollars leave our state and flow to Nevada. Also, as a federal taxpayer, I strongly encourage the U.S. Government to realize the potential which Indian gaming offers for reducing the federal dollars subsidizing tribal budgets, the added financial resources it contributes to surrounding non-Indian communities, and the broad positive impact on development. The existing federal trust responsibility may provide the base, but the tribes must be allowed to continue to develop the innovations and address the unmet needs of our people.

Tribal nations are willing to sit down with the state and federal leaders and discuss these major concerns as sovereign governments. The tribes have exercised their inherent rights of self-governance and will continue to exercise these rights when dealing with the state and federal governments.

In a recent meeting with Secretary of Interior Babbitt, tribal leaders were optimistic that the Secretary would seek conciliation through information gathering and bilateral negotiations between states and tribes. This is the original intention of the Indian Gaming Regulatory Act, an act that provides for negotiations and compromise.

The Indian Gaming Regulatory Act has not had a chance to work, yet there is a threat to reopen the act because states cannot compromise with tribes over gaming compacts. Tribes have successfully negotiated gaming compacts in Wisconsin. Reopening the act threatens tribal relations by creating divisions between tribes that have gaming and those who do not. This was a tactic used during the Indian wars to turn tribes against one another.

In 1988, the Indian Gaming Regulatory Act provided for tribes to regulate gambling on their reservations. Today tribes across the country are reaching an economic level on their reservations that many U.S. citizens take for granted. For the most part this economic success is due to Indian Gaming. While special interest groups such as dog and horsetrack owners cry, "We can't compete with Indian gaming, there's no level playing field," the tribes will continue to utilize gaming revenues to improve the standard of living on the reservations. (Please be cognizant that on the Oneida Reservation gaming revenues are used solely for governmental purposes and no individual entrepreneur is getting rich.) For tribes there has been no level playing field for more than 400 years. There was no level playing field at Wounded Knee, Sand Creek, or Bull Run.

The surrounding communities are also realizing the benefits of Indian Gaming. In some states where economic impact studies have been completed there are strong indications of the financial boost relative to employment, tourism and community development projects. (Please see Local Economic Impacts of Oneida Gaming)

The Oneida Tribe has become the seventh largest employer in the Green Bay area, we have provided sewer and water to hundreds of tribal and non-Indian homes on our reservation. We have a 202 room premier Radisson Inn. The Oneida gaming revenues fully fund the Oneida Police Department, tribal government, and many other community services. These resources also contribute to the Oneida Tribal School, a nursing home, library, museum, housing and numerous other services and programs.

For Oneida, this is just the beginning. As tribal leaders we have a responsibility to provide a better standard of living and quality of life for our membership for the next seven generations. That responsibility is not taken lightly in Oneida, Wisconsin. The Oneida Nation will never take for granted jobs, water and sewer, and adequate police and fire protection--our memories are too long and the scars are still visible.

Questions Related to the Impact of Gaming:

What are some of the economic development projects which the Oneida have attempted over the years? Have they been successful?

Within the Commerce Division of the Tribe, beyond gaming there are a number of economic development efforts. These include: the retail (One Stop quick marts), Oneida Printing, the Oneida Nursing Home, the Radisson Inn (a 202 room complex directly across from the Austin Straubel Airport serving Green Bay), a cattle project involving the breeding of a unique stock known as "Oneida Red," ORTEK (an environmental soil and water testing laboratory), a food service, and an industrial park. While experiencing various degrees of success, their true value to the tribe lies in the future. Through these and other efforts at diversification, it is the tribes's intent to ensure an economic base for its progeny. The key element at this time, however, is that the venture and developmental capital to generate development (and nurture it until such time as it can turn the economic corner), the tribes's security is undercut.

What was the unemployment level for tribal members living on the Oneida Reservation?

Unemployment on the Oneida Reservation exceeded eighty percent in the 1960's and 1970's. Early planning documents developed by the tribes's four employees in the 1970's show that the average educational attainment was approximately eighth grade, almost one third of the people lived in substandard homes (no electricity, no plumbing, or both), and no major employers were interested in locating in this area. Employment figures in 1993 show a tribal payroll of \$26,000,000 and 1,500 employees. Although unemployment continues to loom at approximately 17% (showing the need for continued development and opportunities), the dropping of over 30 percentage points in unemployment while experiencing a reservation population growth of approximately seventy-three and one-half percent between 1976 and 1990 shows the dramatic positive trend.

What was the level of full and part-time employment prior to gaming?

Prior to gaming, the Oneida reservation had virtually no employers. Except for the four tribal employees, all tribal members had to go outside of the reservation community to secure employment. The absence of developmental dollars in the 1960's and the now defunct resources (notably P.L. 93-638) which heralded the era of Indian self-determination contribute to the tribes's commitment to self-sufficiency as the direction for the future.

How many people do the casinos employ?

As of September of 1992, Oneida directly employs 420 people in its gaming operations. It is estimated that another 240 tribal program positions were made possible through the income derived from this source.

What level of funding is being used by the tribe to support the functions of the government as a whole?

Of the approximately \$600,000,000 wagered in Oneida gaming operations, 93% was returned to customers in prizes and winnings--leaving roughly \$40,000,000 in gross profits. Nearly \$6,000,000 was paid in wages to gaming employees, another \$6,000,000 to local vendors (some tribal), and the remaining \$28,000,000 went directly to the tribal government for use in the broad array of programs, services, and further development.

How many jobs have been created by the casino--for Indians and non-Indians?

Oneida's gaming efforts contributed 2,200 jobs in Brown County in 1992. (Brown County includes approximately one-half of the reservation.) Of these jobs, about 700 were filled by tribal members and nearly 1,500 were filled by non-Indians. The projections for 1997, assuming continued trends, will mean 3,000 jobs for the same area: 1,000 for tribal members and 2,000 for others.

What is the average income for gaming employees?

Although salaries are determined across five salary grades, the mean for all gaming employees is approximately \$14,200, not including tips.

What did the Oneida spend on goods and services during 1992?

As noted above, approximately \$6,000,000 were expended on goods and services. Where possible these acquisitions were from tribal and local providers (within 90 miles).

Did these purchases come from Wisconsin suppliers?

Nearly all purchases were from Wisconsin suppliers. The major notable exception is the gaming equipment, itself, for which there is no local provider.

What is the Oneida construction budget for the next five years?

Tribal projections for new construction spending approaches \$80,000,000 over the next five years. In various stages of planning are a new elementary school, gaming facility expansion, and other economic development-related construction.

What is the contribution of visitor/tourism growth as a result of gaming?

In addition to the income from wagers at Oneida gaming, the visitors attracted to the gaming operations spend income directly in local hotels, restaurants, gas stations, and stores. Direct sales to this group are estimated at \$8,000,000, which results in indirect local sales of about \$17,000,000 for a total impact of \$25,000,000.

What was the level of population receiving some form of income support through AFDC or other welfare programs? Today?

Recent newspaper coverage showed that housing assistance for Native Americans (not all of whom are Oneida) in Brown County rose from 1,476 to 1,664 in 1992. Noting the rapid population increase, this represents a reduction on a percentage basis of recipients. Moreover, while the local governments did not address the issue of homelessness, the Oneida Tribe supported the United Amerindian Center contributing approximately \$75,000.00, for the establishment of shelters (off of the reservation).

How did Oneida expend its resources in 1992?

The attached Cash Source and Use Statement graphically shows how the income derived by the Oneida Tribe is utilized to meet the service, employment, and developmental needs of the community.

RECOMMENDATIONS

The following recommendations are being presented to assist the sub-committee in reviewing the entire Indian Gaming Issue:

- Support by the Sub-committee in setting up Regional meetings between the governors and Indian Nations of their respective states in order to promote a better understanding of Indian Gaming.
- Support of the sub-committee to have the Department of Interior and Secretary Babbitt request the Department of Justice to intervene on behalf of Indian Tribes on the 10th and 11th Amendment cases currently before federal courts.
- Support that maintains the dialog between the tribes and Secretary Babbitt is continued. This dialog must be kept equal to the level of access with other governmental officials.
- Support and assist Indian leaders to gain a meeting with President Clinton.
- The impact on tribal economies and the economies of local non-tribal economies should be monitored and reviewed in respect to the benefits of Indian Gaming.
- Support the realization that Indian Gaming needs to be tied to the national economic stimulus package--if not by amendment, in spirit. Tribes are creating jobs and bolstering the economy--without costing the taxpayer one buffalo-head nickel. The economic benefits of Indian gaming need to be tied to the intent of said package.

Should amendments to the Indian Gaming Regulatory Act be proposed, we request that the following be observed:

1. Preservation of the economically competitive advantage established under the original passage and intent of the Act for Indian tribes;
2. That the Act insure a tribes ability to attempt to reach the position of self-determination; and
3. That the Act insure a tribes ability to regulate their own gaming operations.

ONEIDA BINGO & CASINO

2100 Airport Dr., Green Bay, WI 54313 • (414) 497-8118 or 1-800-238-4263

ONEIDA GAMING LOCATIONS :

Irene Moore Activity Center
2100 Airport Drive
Green Bay, WI 54313

Radisson Inn
2040 Airport Drive
Green Bay, WI 54313

E&EE
P.O. Box 365
Oneida, WI 54155

Westwind
2370 West Mason
Green Bay, WI 54303

Hwy 54
P.O. Box 365
Oneida, WI 54155

Lucky U
5300 County Line Road
Oneida, WI 54155

GAMES OFFERED:

High Stakes Bingo - Big Green - JumboOneida - Cash 3 - Pull Tabs
Video Machines - TV Bingo Oneida - Blackjack - Slot Machines

ONEIDA GAMING COMMISSION:

7 Elected Members

ADMINISTRATIVE MANAGEMENT:

Gaming Manager
Bingo Operations
Sales & Marketing
Accounting
Security

Assistant Gaming Manager
TV Bingo Oneida & Lottery
Instant Tickets and Video Machines
Human Resources

NUMBER OF GAMING EMPLOYEES: 1976: 10* 1993: 830*

OTHER RELATED TRIBAL INFORMATION:

Tribal Budget:	1976: \$2.4 Million	1993: \$132 Million
Area Economic Impact:	1976: \$7.2 Million	1993: \$1 Billion
Tribal Employment	1976: 150	1993: 1500

Oneida Gaming began in 1976 with the establishment of Oneida Bingo. Over the years, the other games have been added. The comparisons made herein are to Bingo in 1976 and gaming as it was in 1990-93.

1992 CASINO ANNEX OPENING:

Main Bingo & Casino:	30,000 square feet 25,000 feet of actual gaming space Cost: \$9 Million	
Total Blackjack Tables:	40 tables	\$2 to \$100 limits
Total Slot & Video Machines:	1350 main casino 315 satellite locations TOTAL: 1,665	

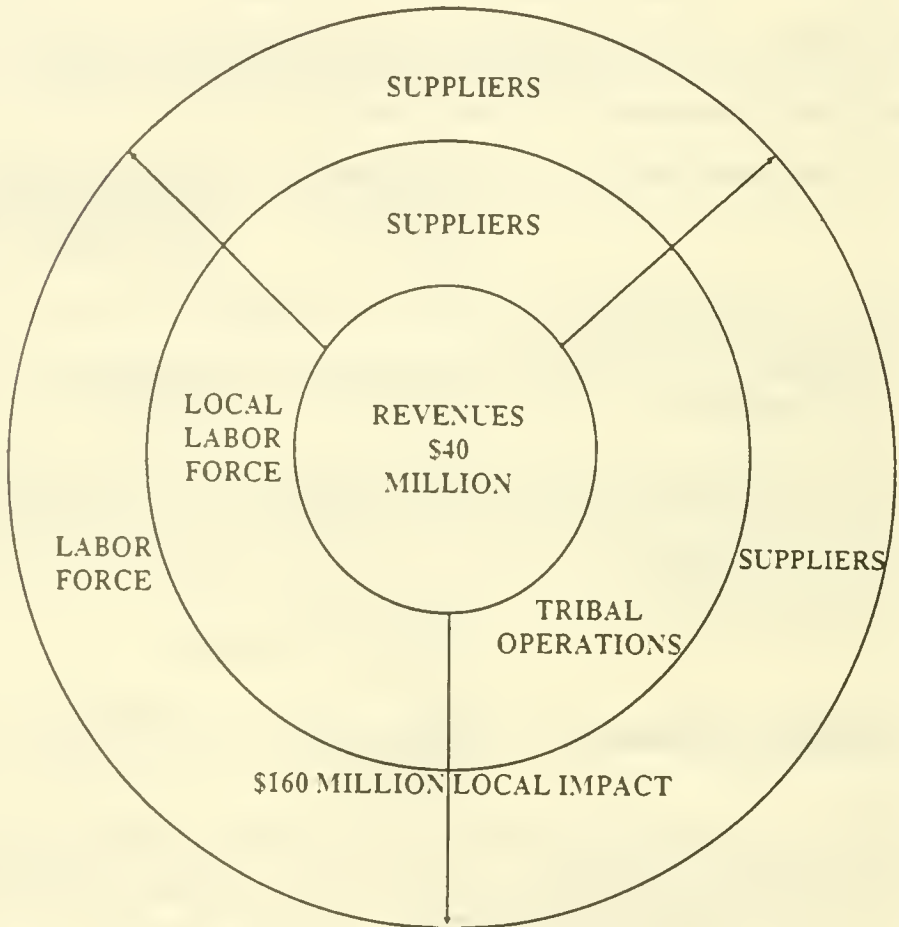
HOW ONEIDA GAMING IS REGULATED

The Oneida Tribe established a gaming ordinance in 1976 to regulate the conduct of gambling on the reservation. Presently, the Oneida Tribe abides by:

Tribal:	Oneida Gaming Commission (elected)
Tribal:	Oneida Business Committee (elected)
State:	Wisconsin / Tribal State Gaming Compact
Federal:	Bureau of Indian Affairs
Federal:	National Indian Gaming Commission and the Indian Gaming Regulatory Act

ONEIDA TRIBE OF INDIANS OF WISCONSIN

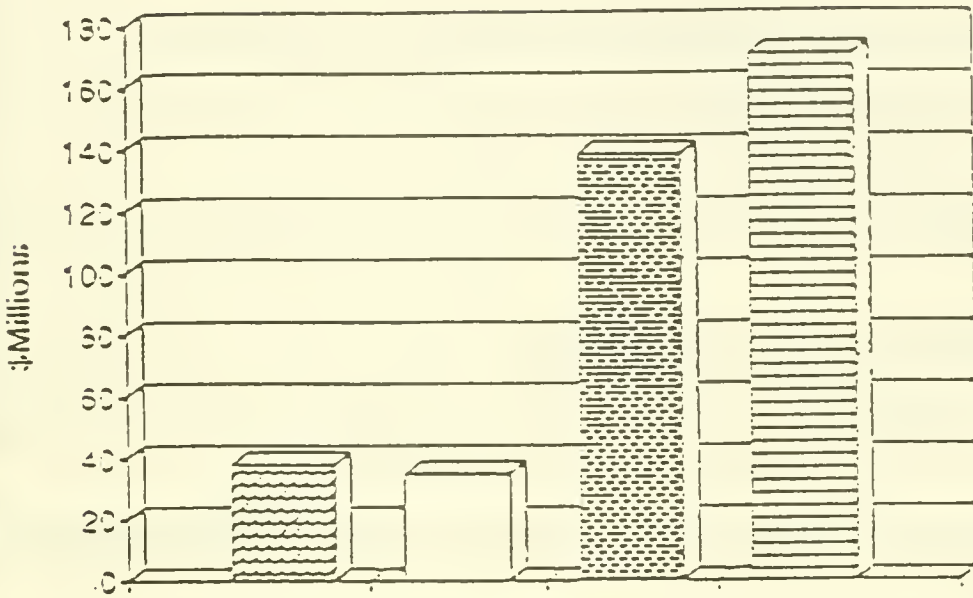
ECONOMIC IMPACT FROM GAMING



\$600 MILLION REGIONAL IMPACT

A Study Commissioned by the Oneida Tribe of Wisconsin and Conducted by the Bureau of Business and Economic Research, University of Wisconsin-Green Bay, James M. Murray, PhD., Director. November 1992

IMPACT OF GAMING & SUPPORTED PROGRAMS



Gross Profit
 Local Purch
 Responding
 Total Impact

By including the transfer of income to the tribe, the impact of the non-locally supported new income generated by the gaming operation increases to include direct purchases in the form of \$5.8 million in wages to gaming employees.

This, in turn, generates an additional \$31 million in local wages and salaries and \$100 million in sales by local business firms, for a total direct and indirect local spending impact of about \$164 million supported by non-local gaming income (see graph). The impact on the local economy of a gaming operation is four times as great when the transfer of net profits to a tribe is included than when the transfer of net profits is not included. The impact of any gaming operation on any local economy will, then, be greatly impacted by how much of the net profit is retained locally.

The Local Economic Impact of the Oneida Gaming Operations

- * \$40 Million added to Brown County Economic Base, 1992.
- * \$200 Million in added spending on Labor and Goods and Services in Brown County, 1992.
- * \$60 Million in projected addition to Brown County Economic Base by 1997.
- * \$300 to \$350 Million projected in Added Spending on Labor and Goods and Services in Brown County, 1997.
- * 2,200 Jobs in Brown County, 1992. About 700 for members of Oneida Tribe, 1,500 for other Brown County residents.
- * 3,000 Jobs in Brown County projected for 1997. 1,000 for members of Oneida Tribe, 2,000 for others.
- * \$50 Million in new spending and over 500 jobs from Gaming related construction spending over next five years.
- * \$28 Million to tribe to support tribal programs, 1992.
- * \$40 to \$50 Million to tribe to support tribal programs projected for 1997.
- * Gaming revenues will support numerous other projects in retail, services, and manufacturing being initiated by the Oneida Tribe in partnership with Brown County and other public and private sector local entities.

HISTORY

Introduction

The Oneida Tribe of Indians of Wisconsin is part of a sovereign nation originally established in what is now the northeastern area of the United States long before the United States was a legal entity. The group which settled in Wisconsin came to this area in the 1830's.

The Oneida Tribe is now among the top ten employers in this region and the employment is growing rapidly. Much of that employment is directly and indirectly supported by the Oneida gaming operation which exists because of the unique legal status of the tribe. Under federal law, Indian tribes, as sovereign entities within the U.S., are not directly subject to all state or local government laws. As a result, the courts have ruled that tribes have the right to operate gaming facilities on land which is designated to be within their jurisdiction.

Recently, in response to regulatory laws and court decisions, each tribe is required to negotiate a compact with the state in which it operates. These compacts establish the types of games to be played and the limits on wagers and winnings, as well as establishing oversight arrangements for the gaming operations. The current compact between the state of Wisconsin and the Oneida Tribe permits high stakes bingo, slot and video machines, blackjack tables, and a lottery.

Oneida Gaming Operations: Revenue Patterns

For the period from October 1, 1991 through August 31, 1992, the Oneida gaming activities generated gross revenues of just over \$375 million.

Oneida Gaming Facilities: Measuring Local Economic Impacts

In the case of the gaming operations, surveys of gaming customers indicated that approximately 20 percent of customers live within a ten mile radius of the Oneida gaming facilities. Thus, it is reasonable to assume that about 20 percent of the gaming revenues reflect local spending and 80 percent originate from outside the local economy. Approximately 10 percent are from out of state, largely from the upper peninsula of Michigan and from the Chicago area of Illinois. About \$30 million is the result of wagers by persons from outside the local area and \$7 million from customers residing in the local area. About \$3 million is attributable to residents of other states. The significance of these distinctions is that income originating from outside the local economy is usually viewed as having a more significant impact on the local economy than income which originates within the local area. Surveys of gaming participants conducted by professional research organizations on behalf of the Oneida Tribe indicate that the Oneida gaming customers also participate actively in gaming at other locations, including other Wisconsin locations, as well as travelling to other locations including Las Vegas and Atlantic City. Based upon that evidence, it is appropriate to assume that in the absence of the Oneida gaming facility, a sizeable percentage of the money wagered by local residents would be wagered in other locations rather than spent on other types of entertainment locally.

Impact of the Oneida gaming operation on the Green Bay area economy, it is reasonable to assume that this operation was responsible for adding \$30 million in income from outside the region to the area economy in the form of gross profits by the Oneida gaming operations between October of 1991 and September of 1992. It also seems reasonable to assume that at least half of the \$7 million retained after winnings from the local customers would have left the region had the Oneida facility not existed.

Observations suggest that the Oneida gaming operation in 1992 added about \$3 million per month, or \$36 million per year directly to the economic base of the Green Bay area economy.

A significant percentage of the money received by the employees of the gaming operations, as well as by the employees of the tribal operations supported by gaming revenues, and that received by local vendors, is respent in the local economy on a wide variety of goods and services.

Visitor Spending

The Green Bay Visitor and Convention Bureau conducted a study of visitor spending in 1990 which was published in November of 1991. That study estimates that the day trip visitors contributed only 6 per cent of the total visitor spending in Brown County. The bulk of the visitor spending, then, is associated with those who stay in hotels. It is estimated that the 30,000 gaming customers who stayed in hotels stayed an average of 2 nights each, and spent approximately \$125 locally per day, per person, on other than gaming activities. The total visitor spending by those gaming customers who stay in hotels is estimated to be about \$7.5 million per year, and that for single day visitors about \$500,000, for a total of \$8 million per year in non-gaming expenditures by visitors who come to the Oneida gaming facility.

Spending resulting from the local recirculation of visitor spending would add another \$17.4 million per year, for a total direct and indirect impact from visitor spending of \$25.4 million per year.

Visitor spending by non-local Oneida gaming customers who stay in a hotel, and the recirculation of that spending in the local economy, would support about 640 full-time equivalent jobs.

Mr. RICHARDSON. Doctor Murray.

STATEMENT OF JAMES M. MURRAY

Dr. MURRAY. Thank you. I appreciate the opportunity to address this august body.

I have been invited here largely because of the research I have done, some of which is the basis for some of Ms. Doxtator's remarks with respect to the Oneida's. I have also done a study of impact of gaming on the economy of Wisconsin. And I can tell you that as of the end of 1992, there were 4,500 people in Wisconsin directly employed in gaming, of whom half were Indian people, and also of whom half were unemployed prior to their employment in gaming and half that group were on some form of welfare.

I think when you start looking at numbers of those kind—1,000 people being taken off the welfare rolls—there are no other programs that can claim that kind of success.

Seventy percent of tribal budgets in Wisconsin are supported by the Indian gaming revenues at this time. We estimate that \$500 million in additional purchases are made possible by the combination of the spending of the Indian gaming employees, the combination of visitors' spending, and purchases from suppliers in the State of Wisconsin, and when the multiplier is applied to that, as the income is recirculated within the State, an additional billion dollars of impact occurs.

Having lived on Indian reservations as a young person myself, including the reservation in Mr. Williams' jurisdiction, I can say that I have observed many years of policies on the reservations intended to improve the economic circumstance of the Indian people; and while we have seen individual successes as Indian people have become educated and successful, many of those have left the reservation.

We have seen individual enterprises be successful, but the multiplier effect of those individual enterprises is small indeed because of a lack of commercial infrastructure in the community to recirculate the income.

One of the things I was interested in was trying to figure out as an economist why this program is so successful in contrast to other efforts made over the past many decades. I think one of the differences is that each of the other efforts have been focused on individuals rather than on the community.

I think the broad sweeping impact of gaming is that it offers almost instantaneously employment to just about anybody in the reservation community that wants a job. It also offers Indian people the opportunity to enter the job market at almost any level. There are jobs for people with no experience, as there are jobs for people with college degrees in a variety of subjects. So it is an incredible phenomenon and also because it has surged such a large influx of income into the Indian communities.

It does what we talk about in economics—push the community from what was a low-level-stagnation situation to the take-off point, to use Walter Rostow's terminology that he uses in Third World economics. I think you can realize this means that, once this happens, the idea of self-determination really becomes real because there are resources that go beyond those that are necessary simply

to take care of everyday needs to satisfy people's most immediate needs. Now there is room for investment, growth and self-sustaining growth. That is happening in Indian country now almost totally because of gaming.

I would say that I have listened to the concerns that have been expressed about the propriety of Indian gaming, and I find it kind of interesting as a source of revenue to the tribes. As we sit here, I am reminded that the first European colony, Jamestown, Virginia, was financed by a lottery, that George Washington used a lottery to finance his defense budget, and that Harvard and Yale used lotteries as start-up funds for their activities. We now have 38 States across the country using gaming revenues as substantial sources of income.

So I think that the Indian people are entitled to these sources of revenues. If they are appropriate for other government bodies, they are appropriate for Indian communities as well. Thank you very much.

[Prepared statement of Dr. Murray and attachments follows:]

Statement of James M. Murray, PhD., (Economics) Green Bay, WI

Thank you very much for the opportunity to address this august body. I have been invited here largely because of my research on the impact of American Indian gaming facilities on the economy of Wisconsin. Based upon my research, I can tell you that over 5,000 people in Wisconsin are currently employed in these facilities. Of this number, about half are enrolled members of federally recognized Indian tribes. Of those employed, over half were unemployed, of whom, about half were on some form of welfare prior to being employed by the gaming operations. These individuals typically more than doubled their income, and that income is now supported by discretionary consumer spending rather than by federal and state taxes.

In addition to the benefits to individual Indian people, the net profits from the gaming activity now constitute seventy percent of the base of support for tribal programs. These funds are used to provide human services, housing, education, health care, and economic development in the Indian communities. Significant sums are also being used to redeem the land base lost by many Wisconsin tribes around the turn of the century, and most tribes are accumulating reserves as a basis for long range development programs.

In addition to the benefits to the American Indian communities, the gaming operations are generating significant benefits for non-Indian people as well. In my research in Wisconsin, we estimate that the spending by the gaming operations on wages and salaries and purchases from suppliers within the state, in addition to the construction spending and the non-gaming spending by gaming customers support about \$500 million in sales in the state. As this income is recirculated when respent by the recipients within the state, it adds an additional \$1 billion in sales, for a total increase in sales of \$1.5 billion. About twenty percent of the gaming spending originates from outside the state and represents a clear addition to the state's economic base.

I have forwarded copies of my studies to your staff in the event that you want to get more details for your deliberations. Rather than dwell on the numbers in this brief presentation, I would like to put Indian gaming into a historical and theoretical context.

Having been born and raised in Indian communities where my father was a teacher, and having worked professionally on economic development programs with Indian communities since becoming a professional economist, I have witnessed sixty years of federal programs in education, relocation, industrial development, and commercial development aimed at improving the economic circumstances of the Indian people. While there have been some inspiring success stories, over fifty percent of the American Indian people residing in the Indian communities were officially poor according to the 1990 census, in contrast with thirteen percent for the general population. Unemployment rates in the 1980's in these places varied between twice the national rate in some to ten times the national rate in others.

As we evaluate the results of past policies, we can observe that many Indian people have become very successful, by the standards of the dominant culture. I can personally testify to the remarkable improvements in the physical infrastructure in the four Indian communities in which I lived as a boy. The progress in housing, schools, long term care facilities, among others, has been close to revolutionary.

Past efforts, then, generated successes for a selective group of individual Indian people, for selective enterprises, and made Indian communities more comparable to surrounding areas in terms of physical amenities. For all of these successes, the Indian communities and the majority of the Indian people continued to be the poorest of the poor with the highest unemployment rates for any ethnic group in this country.

In the very brief time since the passage of the Indian Gaming Regulatory Act in 1988, it has been demonstrated that gaming is the first activity which offers the promise of reducing unemployment and poverty in Indian communities to levels comparable to those in surrounding communities. It is worthwhile to consider the differences between past policies and this new opportunity to understand why one can work where others were less successful.

Past programs addressing Indian poverty have tended to focus on individuals rather than on the community. Encouraging individual Indian people to pursue an education, to get a job, or to start a business, has been a major thrust of federal programs aimed at reducing poverty among Indian people. These efforts have often lifted individual Indian people out of poverty, but have not spread to the rest of the Indian community. Many of the successful Indian individuals have left the reservations because of the lack of economic opportunities. Most reservations lack the critical mass required to support anything but the smallest retail or service enterprise and the lack of a commercial infrastructure causes income generated on the reservation to quickly escape to other locations. As a result, new small businesses generate a few direct jobs, but very few indirect jobs because the income is not recirculated locally.

Gaming, in contrast, is big business in the context of these small communities. Rather than focusing on a few individuals, it offers opportunities for employment to an entire community. In economic terms, it is equivalent to pushing the Indian community from a state of "low-level-stagnation" to the "take-off point." This terminology is borrowed from Dr. Walter Rostow and others who have studied third world economies.

Low level stagnation is a condition in which an economy cannot achieve a sustained level of economic growth because the income levels are so low that the preference for present consumption overwhelms the willingness and ability to devote resources to investments which will generate more income in the future. When income levels in an economy reach the level where present needs can be reasonably met, the people begin to think about the future and are willing to invest and save by pursuing education, buying insurance, building schools, factories, etc. This process is

underway currently in Indian country, and only because gaming has given the Indian communities the resources to be able to engage in meaningful long range planning.

Furthermore, in contrast with earlier economic development efforts, gaming provides employment on terms which are truly unique in the experience of most Indian people. Rather than needing to overcome the racial discrimination often encountered in the non-Indian job market, they are actually given a preference in employment. Rather than answering to people who may not understand their unique value system, they now find their employer to be someone who not only understands, but shares, these values.

Gaming enterprises have the advantage of offering entry at any level for which the Indian person qualifies, from positions requiring no prior experience to top level management positions. It also offers a career track within which the person can progress from entry level to higher paying and more responsible positions. Perhaps the most attractive aspect of these opportunities is that they are typically available without requiring the Indian person to relocate to a non-Indian community.

For all of us who have been arguing for years that Indian people really prefer employment to accepting transfer payments, it is gratifying to observe the response of Indian people to the jobs offered by the gaming facilities. As noted earlier in my remarks, over half of those employed by the gaming facilities had been unemployed prior to obtaining these jobs. Unemployment rates on reservations in Wisconsin have dropped in five years from levels which were as much as ten times the state average in some communities, to levels which approximate those for surrounding communities.

As we judge the propriety of gaming as a source of revenue for the Indian community governments, we need to remind ourselves that George Washington used a lottery to help support his defense budget, and Harvard and Yale Universities used lotteries as major start-up funding sources. Thirty eight states now have lotteries, and taxes on video/slots machines and casinos are major sources of revenues for the states of Nevada, New Jersey, Colorado, and South Dakota. Under the rules of the Indian Gaming Regulatory Act, and the compacts which have been negotiated with the states, the net profits from gaming must accrue to the tribal government budgets. Gaming profits are now the major revenue source for the Indian communities which are reasserting their sovereignty and strive to become economically viable nations within a nation, offering to their citizens a full measure of the economic prosperity which is enjoyed by citizens of surrounding cements.

SUPPLEMENTAL SHEET:

Testimony of James M. Murray, PhD., before the U.S. House of Representatives, Committee on Natural Resources, Subcommittee on Indian Affairs, April 2, 1993.

Subject: Economic Impacts of American Indian Gaming Facilities.

James M. Murray, PhD.

Professor of Economics/Business Admin., Univ. of Wi.-Green Bay
Community Economic Development Specialist; University of Wisconsin-
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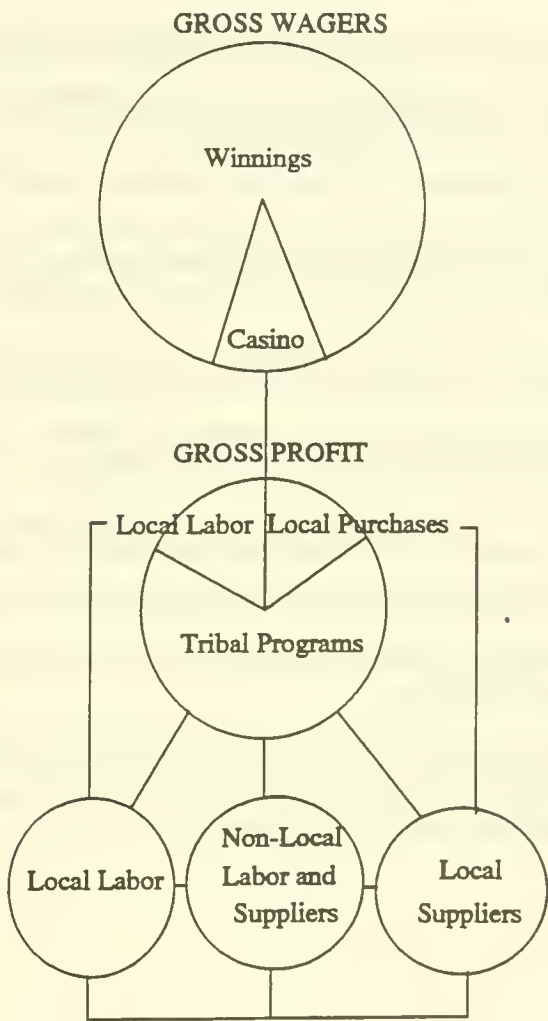
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Topical Outline:

1. Summary of research on economic impacts of Indian gaming in Wisconsin.
2. Comparison of past economic development programs in Indian communities and gaming.
3. Unique aspects of gaming as a source of employment for Indian people.
4. Propriety and importance of gaming as a revenue source for Indian communities.

LOCAL ECONOMIC IMPACTS OF ONEIDA GAMING



ONEIDA GAMING REVENUE FLOWS

A Study Commissioned by the Oneida Indian Tribe of Wisconsin and Conducted by the Bureau of Business and Economic Research, University of Wisconsin-Green Bay, James M. Murray, PhD., Director. November 1992

The Local Economic Impact of the Oneida Gaming Operations

- * \$40 Million added to Brown County Economic Base, 1992.**
- * \$200 Million in Added Spending on Labor and Goods and Services in Brown County, 1992.**
- * \$60 Million in projected addition to Brown County Economic Base by 1997.**
- * \$300 to \$350 Million projected in Added Spending on Labor and Goods and Services in Brown County, 1997.**
- * 2,200 Jobs in Brown County, 1992. About 700 for members of Oneida tribe, 1,500 for other Brown County residents.**
- * 3,000 Jobs in Brown County projected for 1997. 1,000 for members of Oneida tribe, 2,000 for others.**
- * \$50 Million in new spending and over 500 jobs from Gaming related construction spending over next five years.**
- * \$28 Million to tribe to support tribal programs, 1992.**
- * \$40 to \$50 Million to tribe to support tribal programs projected for 1997.**
- * Gaming revenues will support numerous other projects in retail, services, and manufacturing being initiated by the Oneida tribe in partnership with Brown County and other public and private sector local entities.**

ACKNOWLEDGEMENTS:

Many people contributed to the development of this document. Staff persons in the gaming operation and the planning, accounting and personnel offices of the Oneida tribe, were most helpful, especially, Artley Skenandore, Kevin Cornelliuss, Bob Niemela, Bruce King, Larry Barton, Linda Zipp and Betty Gould.

Kevin Kuse, Graduate Assistant in the Bureau of Business Research, and Shawna Moe, Clerical Assistant in the U.W. Extension Office, contributed to the analysis and preparation of the document.

Appreciation to these people is expressed with the understanding that they bear no responsibility for any errors in the document.

James. M. Murray

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LOCAL ECONOMIC IMPACTS OF ONEIDA GAMING

SUMMARY, CONCLUSIONS, AND FORECASTS

Introduction

The addition of gaming to its economic base has transformed the Oneida Tribe of Indians of Wisconsin from a small community of people struggling to improve their quality of life on budgets in the tens of thousands in the 1960's and early 1970's, into a dynamic corporate entity which is now among the largest employers in the region and which operates with budgets in the tens of millions. In the course of this evolution, no individual Indian people have realized the extremely high salaries and accumulations of wealth typically associated with business success in this country. Rather, the entire Oneida community has shared the proceeds, first because the gaming operation is managed and staffed by Oneida people as employees of the gaming division of tribal operations, and second, because all of the net profits of the gaming operation are transferred to the tribe to support its programs in education, land acquisition, health care, elderly care, youth activities, housing, etc. The consequences of this transformation for members of the Oneida community include reducing the unemployment rate among Oneida people by at least fifty percent, reducing the incidence of welfare dependence, increasing family incomes, and improving the available support services delivered by the tribe for people of all ages.

In addition to the impacts on the tribe and its members, the gaming activity brings new income into the community from outside customers thus adding to the economic base of the local economy. This generates sales, jobs, and income for a large number of local business firms and individuals other than tribal members. This new income is then recirculated within the local economy generating an impact which is a multiple of the original new income which is attracted by the gaming operation. The purpose of this study is to demonstrate and document the impact of the gaming activities on the local economy, as well as on the Oneida community.

This analysis concentrates on the positive economic impacts of gaming on the local economy. No attempt is made to address the social consequences of gaming on either tribal or non-tribal participants. The view taken here is that gaming is one of many forms of entertainment. While some are concerned with the potential for excessive expenditures by those people inclined toward addictive behavior, the evidence from a wide variety of national studies indicates that gaming addiction affects no more than one or two percent of the participants. Addictive behavior can be found among those who consume alcohol, and even those who shop in stores. This has not, and should not, result in laws prohibiting alcohol consumption nor should it cause us to encourage stores to close. Rather, it is the addictive behavior which should be treated.

The Oneida tribe views gaming in the same manner as does the state of Wisconsin, namely, as a major source of much needed revenue. To the extent that the gaming in this state has adverse social consequences, the tribe is anxious to cooperate with the state in assisting those affected.

The ability of the Oneida Tribe to benefit from this source of revenue is based upon its status as a sovereign entity established prior to the formation of the United States, with which the Oneida nation negotiated treaties. The continuation of gaming and its benefits to the tribe, and the local economy, depend upon the respect of all levels of government for the unique status afforded to Indian tribes by these treaties and by the U.S. constitution.

Gaming Proceeds and Their Disposition

The Oneida fiscal year from October 1991 to September 1992 is used as the study period for this analysis. This was the first year of operation impacted by the new gaming compact negotiated with the State of Wisconsin. Gaming revenues from bingo, which was the first activity offered by the Oneida gaming operations, have ceased to grow, while those from the newly introduced slot and video machines have grown rapidly. It is understood that these new markets will continue to grow rapidly in the near future, but will also mature as they reach saturation levels at some point in time. The purpose here is to document the impact of the activities in a single year as a basis for demonstrating the local economic impact of these activities and to provide a method by which the impacts of future expanded levels of gaming activity can be estimated. Because of the nature of this document, numbers will frequently be rounded for ease of presentation and recall.

In the most recent fiscal year, approximately \$600 million was wagered in the combined facilities operated by the Oneida gaming operations. Of that amount, approximately \$560 million (93%) was returned to the customers as prizes and winnings. The remaining \$40 million represents the gross profit of the gaming operation. (Figure 1) Of that amount, approximately \$6 million was paid in wages to gaming employees, another \$6 million was spent on purchases of goods and services from local vendors, including the tribal print shop, construction operation, and accounting and personnel services, a small amount was spent on purchases from non-local suppliers, and \$28 million was transferred to the tribe to support tribal programs, including equipment and construction outlays for gaming facilities. (Figure 2) The next question addressed is, how does all of this impact the local economy in which the gaming facility operates (Brown County, Wisconsin)?

GAMING PROCEEDS AND THEIR DISTRIBUTION

Total Wagered \$600 Million

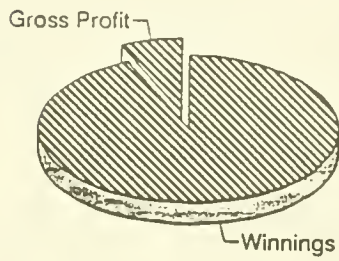


Figure 1

Distribution of Gross Profit

Total For Recent Year = \$40 Million

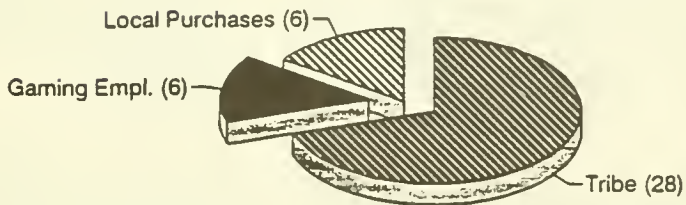


Figure 2

The Impact of Gaming Operation Spending on the Local Economy

In assessing the impact of any business operation on a local economy it is important to determine the source of the income which supports its sales. If a new business firm enters the local market and captures a share of that market from existing firms, the positive impact of the new business is offset by the negative impact on other firms. If, on the other hand, the new business sells most of its products or services outside the local area, it is bringing added income into the local economy which adds to the area's economic base. It is estimated that the Oneida gaming operation was responsible for adding \$36 million in new income to the economic base of Brown County in the most recent 12 month period. The basis for this estimate is as follows:

According to the customer surveys conducted by professional organizations for the Oneida tribe, approximately 20 percent of the gaming customers are from the local area (essentially Brown Co.). This would suggest that 80 percent of the gaming revenues originate with people coming from outside the local area. In addition to the 80 percent from non-local sources, it is estimated that at least half of the 20 percent wagered by local residents would be wagered in non-local gaming establishments in the absence of the Oneida gaming facilities. The Oneida operation is unique, among business firms, because there are no direct counterparts locally which can offer legal high stakes gaming opportunities. Retaining local income has, essentially, the same impact as attracting outside income.

By combining these observations, it is estimated that approximately 90 percent of the wagering at the Oneida gaming facility is supported by non-local income or represents income which would escape to non-local gaming facilities if the Oneida facility were not present. Only 10 percent of the income is captured from other local discretionary spending. Of the \$40 million in gross profit from the Oneida gaming operations, then, \$36 million is supported by the equivalent of non-local income. This amount represents the injection of new income into the local economy which would clearly not be here in the absence of this activity.

As a part of the \$36 million is spent on wages for employees and purchases from local vendors, these groups, in turn, respend portions of that income locally, multiplying the initial impact as the income continues to recirculate. The purchases of labor and supplies by the initiator of the new income, in this case the Oneida gaming operation, are referred to as "direct purchases." The purchases generated by the respending of the income received by the direct employees and suppliers are labelled "indirect spending." The combined direct and indirect spending causes the total spending in the local economy to be some multiple of the initial direct spending. The size of this multiplier impact depends upon how much each group receiving the income spends

locally. In each round of spending, some escapes to other communities until the impact is ultimately dissipated.

Out of the \$36 million in non-local income attracted by the gaming operation in the most recent 12 months, about \$5.8 million was spent on wages and salaries of local gaming employees, and about \$6 million on purchases from local suppliers for a total in local direct spending by the gaming operation of \$11.8 million. The respending of this \$11.8 million by the employees and suppliers who received it (indirect purchases) generated an additional \$8 million in wages and salaries and \$17.7 million in sales for other local business firms as the income was recirculated. Thus, out of the \$36 million in gross profits supported by non-local spending, the gaming operation direct local purchases of \$11.8 million generated an additional \$26 million in indirect local purchases as the new income was respent locally, for a total impact of \$37.5 million. (Figure 3) This, then, demonstrates the impact of the gaming operation on the local economy without the transfer of any net profits to the tribe.

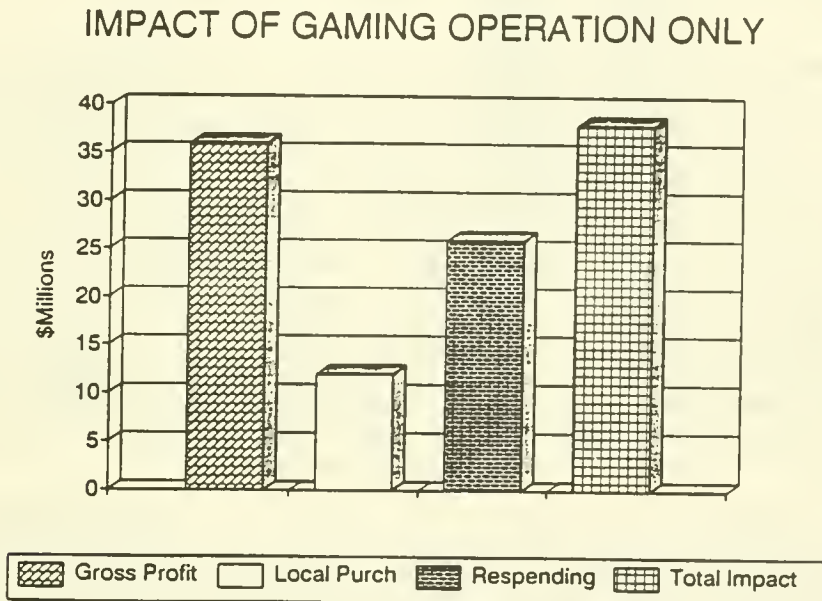


Figure 3

Among the gaming operations on Indian reservations, there are many organizational structures. The most significant difference is that some, like the Oneida operation, are managed entirely as tribal operations. Some Indian communities, in contrast, contract with management groups to operate their gaming activities and pay the management group a share of the gross profits (typically 30 to 40 percent). It is, therefore, useful to demonstrate the impacts of the gaming operation without the transfer of net profits to the tribe and contrast that with the impact when all net profits are transferred to the tribe. This process illustrates the difference in the impact of a gaming operation operated by non-local managers who transfer the net profits out of the local area, and a locally managed operation which transfers net profits to an entity within the area.

In the case of the Oneida gaming operation, the net profits are transferred to the tribe which uses them to support tribal programs. This is currently equivalent to having the gaming operation spend an additional 68 percent of its gross profit on purchases from a local supplier. The tribe, like local business and government entities, hires local labor and purchases significant portions of its goods and services from local businesses.

The linkage between the Oneida tribe and its gaming operation is a very close one, and the gaming operation functions more like a department within the tribe than as a totally separate entity. For example, the gaming operation transfers all net profits to the tribe and the tribe, in turn, determines how much will be returned to the gaming unit for the purchase of new equipment and new construction (expansion). This situation makes it logical to demonstrate the impact as including the supported tribal programs rather than simply considering the impact of the gaming operation alone. This arrangement also explains why the non-local spending by the gaming operation represents only about 10 percent of its gross profits. The purchase of gaming equipment is almost totally non-local, but this is not reflected in the operational financial statements of the gaming unit because these become an item in the tribal budget referred to as "gaming expansion."

When the transfer to the tribe of 68 percent of the gross profits is incorporated, local spending by the gaming operation increases from 32 percent to over 90 percent of non-locally supported gross profits. This is true because the direct non-local spending by the gaming operation is about equal to the locally supported gross profit. As noted above, the locally supported gaming expenditures are not included as a source of new income, and the direct non-local spending is the amount of gaming income which is immediately transferred to other places.

By including the transfer of income to the tribe, the impact of the non-locally supported new income generated by the gaming operation increases to include direct purchases in the form of \$5.8 million in wages to gaming employees and \$27.5 million in purchases from local suppliers (with the tribe treated as a local supplier) for a total of \$33.3 million in local direct spending. This, in turn, generates an additional \$31 million in local wages and salaries and \$100 million in sales by local business firms, for a total direct and indirect local spending impact of about \$164 million supported by non-local gaming income. (Figure 4) The impact on the local economy of a gaming operation is four times as great when the transfer of net profits to a tribe is included than when the transfer of net profits is not included. The impact of any gaming operation on any local economy will, then, be greatly impacted by how much of the net profit is retained locally.

IMPACT OF GAMING & SUPPORTED PROGRAMS

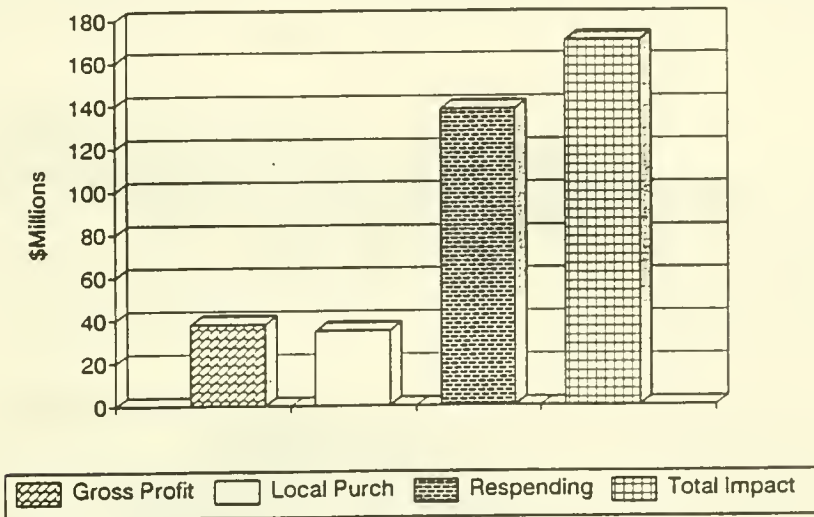


Figure 4

Visitor Spending.

In addition to the income from wagers at the Oneida facilities, the visitors attracted to the gaming operations spend income directly in local hotels, restaurants, gas stations, and stores. The visitor spending by persons attracted by the Oneida gaming facilities is largely associated with the 17 percent of gaming customers who stay in area hotels. The direct sales to this group are estimated to be about \$8 million, which results in indirect local sales of about \$17 million for a total impact of \$25 million. Using sales/employment ratios in the affected activities, this level of spending would support about 640 jobs.

Employment Impacts

In addition to measuring the impact on wages and sales of the non-local income injected into the local economy by the Oneida gaming operation, it is also useful to translate these impacts into local jobs created. About 380 of the 420 jobs in the gaming facilities in the summer of 1992 were supported by non-local income. In addition, about 330 jobs were generated by the direct purchases from local suppliers (including the tribe) and another 867 jobs from the indirect spending. The visitor spending supported another 200 jobs from the direct spending of tourists and 440 jobs from the resulting indirect spending. Thus, a total of 910 local jobs are generated in the local economy by the direct purchases of the gaming operation and the non-gaming expenditures of visitors attracted by the gaming activities, and another 1,307 jobs are generated by the resulting indirect spending for a total of 2,217 local jobs. (Figure 5)

DIRECT AND INDIRECT EMPLOYMENT SUPPORTED BY NON-LOCAL SPENDING AT THE ONEIDA GAMING FACILITIES. (Total 2,217 Jobs)

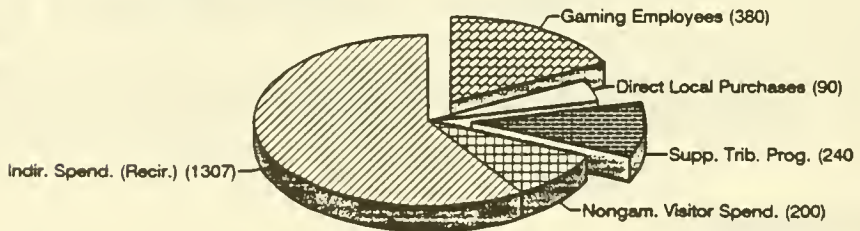


Figure 5

Construction Spending

In addition to the impacts from the ongoing gaming operations, significant local impacts result from the construction of facilities to house the gaming activities. Because construction spending varies greatly from year to year, its impacts will also vary and, thus, it is treated separately here.

In the most recent fiscal year, the construction spending which is directly associated with the gaming operations totalled approximately \$2.8 million. Of that spending, about \$1.4 million was spent on purchases of local labor and from local suppliers. The model used in this analysis suggests that every dollar of local spending on construction will generate another \$2.80 in local income as the original income is respent locally. Thus, the \$1.4 million in local spending associated with the construction of gaming facilities generated an additional \$4 million as the income received was respent locally. The total local spending resulting from construction spending on gaming facilities in the most recent year, then, would be about \$5.4 million.

Expected Future Developments

Approximately \$2 million of the construction spending noted above reflects the construction of a temporary facility which will about double the floor space at the Irene Moore Activity Center (Bingo/Casino Operation). This is expected to accommodate a doubling in the number of slot and video machines and blackjack tables. It will also reduce the crowding in the bingo facility which is expected to help sustain attendance at that activity.

It is expected that sometime in 1993, construction will be initiated on a new, larger, permanent casino facility at a cost of about \$20 million. It is the objective of the Oneida tribe to attempt to capture a major share of the gaming market in northeastern and east central Wisconsin, as well as continuing to penetrate the southeastern Wisconsin market and the border areas in Illinois and Michigan.

Expanded hotel facilities are also planned to increase the number of people who will come greater distances and stay for more than a single day. It is expected that the markets to the west and northwest of Green Bay will be shared with the major facilities developed by other Wisconsin Indian communities. These facilities also penetrate the Oneida markets and are expected to continue doing so. This may be viewed by some as competition, but there are also complementary relationships between these facilities as gaming participants, like most customers, like variety. Package bus tours often include stops at Oneida and several other Indian gaming facilities.

The expanded casino facilities and hotel accommodations are intended to allow the Oneida community to target as much as 35 percent of the Wisconsin gaming market. This would suggest that gross profits would increase to about \$65 million within the next five years. This would provide the support for wage and salary payment of over \$10 Million to gaming employees, another \$10 million in purchases from local suppliers, about \$40 million for tribal programs, with the balance of \$5 million being used for remodeling, expanding, and maintaining the gaming facilities. As these funds are respent locally, the impact would be to support an additional \$190 million in local wages and local sales in non-gaming activities for a total local spending impact of about \$250 million. It is expected that gaming employment would grow to about 650 to 700 persons, and non-gaming employment in the local area resulting from the respending of gaming proceeds would be about 2,500, including 500 jobs in the supported Oneida tribal programs.

To help consolidate all of the information supplied in this report, it is useful to summarize the current and projected financial impacts of the Oneida gaming operations on the local economy. (Table S - 1) The gross wager figure may seem high to some. It is important to note that this includes the recycling of winnings which typically range from six to eight times the amount which slot and blackjack players bring to the gaming facility to wager.

The Impact of the Termination of Gaming

Because the Oneida gaming operation is currently based upon a seven year compact with the state of Wisconsin, its continuation depends upon the renewal of that contract and on the good will of all levels of government, and the general public, in respecting the unique status of the Oneida tribe based upon treaties negotiated with the U.S. government. As the public considers its position on these matters, it is important for people to recognize the significant economic partnership that has evolved between the Oneida tribe and the surrounding area. The termination of Oneida gaming would have very serious impacts on both the tribe and the local economy.

In the absence of gaming, all of the gaming employment would be lost, as well as that in supported tribal programs which could not find alternative sources of support. As a result, most of the non-gaming employment supported in the local area could be lost as well. In the current year, the difference in total employment with and without gaming is at least 2,000 jobs, and based upon future projections, the difference with and without gaming would be close to 3,000 jobs. Of these jobs, only about 1,000 would be held by members of the Oneida tribe, while the other 2,000 are jobs which will be held by members of other tribes and non-Indian people in the local area.

Table S - 1

SUMMARY OF CURRENT AND PROJECTED IMPACTS OF ONEIDA GAMING OPERATIONS

	Recent Fiscal Year (Oct. '91 - Sept. '92) (\$ millions)	Projected (Oct. '96-Sept. '97) (\$ millions)
Gross Wagers	\$600	\$1,200
Cost of Sales (Winnings, etc.)	560	1,135
Gross Profit	40	65
Non-local (New Income Injection)	36	58
Non-Locally Supported		
Direct Local Spending by		
Gaming Operation:		
Without Transfer to Tribe	11	18
With Transfer to Tribe	33	53
Indirect Local Spending		
(Respending of Income Received		
from local purchases of labor		
and supplies by Gaming Operation)		
Without Transfer to Tribe	26	42
With transfer to Tribe	131	210
Visitor Spending		
Direct Spending	8	13
Indirect from Respending	17	28
Totals:		
Direct Local Spending:		
Without Transfer to Tribe	19	31
With Transfer to Tribe	41	81
Indirect Local Spending:		
Without Transfer to Tribe	41	70
With Transfer to Tribe	148	238
Construction Spending		
Total	2.8	(1993 to 1996) 25
Direct Local Purchases	1.4	12
Indirect from Respending	4	34

Introduction

The Oneida Tribe of Indians of Wisconsin is part of a sovereign nation originally established in what is now the northeastern area of the United States long before the United States was a legal entity. The group which settled in Wisconsin came to this area in the 1830's and purchased their land from the Menominee Indian Tribe which represented the original inhabitants of this region. In 1924, the U.S. Congress granted citizenship in the U.S. to all American Indian people which gave the Oneida people dual citizenship in the U.S. and the Oneida Nation. Under the Indian Reorganization Act of 1934, the Oneida Nation also became a corporation under the laws of the United States federal government. This brief historical background is presented for the benefit of the readers who are not aware of the unique organizational structure of American Indian tribes.

The major purpose of this document is to demonstrate the impact of the Oneida gaming operations on the local economy of northeastern Wisconsin and, especially, on the Green Bay urban area. The Oneida tribe is now among the top ten employers in this region and the employment is growing rapidly. Much of that employment is directly and indirectly supported by the Oneida gaming operation which exists because of the unique legal status of the tribe. Under federal law, Indian tribes, as sovereign entities within the U.S., are not directly subject to all state or local government laws. As a result, the courts have ruled that tribes have the right to

operate gaming facilities on land which is designated to be within their jurisdiction. The term "trust land" is used to describe such land because the designation is determined by the federal government with which the tribes negotiated treaties, with the federal government exercising some control over the use and disposition of Indian lands.

While the tribes are not directly subject to state laws, the courts have ruled, and the tribes have generally agreed, that gaming activities should be restricted to those which are permitted by the states in which the Indian tribes are located. The states originally were not allowed to impose restrictions on the amount to be wagered or won, as they typically imposed such limits on charitable organizations which were the major groups offering gaming opportunities. This was the basis for the evolution of "high stakes bingo" on reservations in several states, and was the first activity at the Oneida gaming facilities in the mid 1970's.

Recently, in response to regulatory laws and court decisions, each tribe is required to negotiate a compact with the state in which it operates. These compacts establish the types of games to be played and the limits on wagers and winnings, as well as establishing oversight arrangements for the gaming operations. The current compact between the state of Wisconsin and the Oneida tribe permits high stakes bingo, slot and video machines, blackjack tables, and a lottery. It does not allow, for example, roulette, dice, or

table poker. The current contract was negotiated in 1991 and runs for seven years at which time it is subject to renegotiation.

Oneida Gaming Operations: Facilities

The Oneida gaming operations include the Irene Moore Activity Center which is located across from Green Bay's Austin-Straubel Airport and immediately west of the Radisson Hotel which is also a tribal enterprise. Bingo, slot and video machines, blackjack tables, and pull tabs are the games available at the Irene Moore Center which is the largest source of gaming revenue for the tribe. The tribe also operates four gas station/convenience stores which have areas containing slot and video machines and sell the Oneida lottery tickets. Slot machines are also located in the Radisson Hotel. The gaming activities also include a bingo operation at the Norbert Hill administration building, and TV Bingo which is offered to local residents on a local TV channel. The revenues reported here include those from all of these operations. It is worth noting that in the most recent fiscal year, the slot and video receipts accounted for over 75 percent of the total gross income from gaming.

Oneida Gaming Operations: Revenue Patterns

For the period from October 1, 1991 through August 31, 1992, the Oneida gaming activities generated gross revenues of just over \$375

million. Of that amount, approximately \$338 million was paid out in prizes to the winners of the various games. This resulted in gross profits to the gaming operation of about \$37 million. It is important for the public to realize that when they hear of the very large gross receipts from gaming operations, they should note that in the case of the Oneida gaming operation, over 90 percent of these revenues are immediately returned to the customers as winnings, with the gaming facility retaining only 10 percent to cover its cost of operations.

When people are told that 90 percent of gross revenues are returned in winnings, they are typically skeptical and contend that they have never experienced that level of winnings personally. The distortion in these numbers occurs because the gross revenue includes winnings which are re-wagered. For example, an individual may enter the casino and purchase \$20 in quarters to play the slot machines. The person will typically win some amount in the course of playing, but unless it is a very large amount, will be inclined to re-wager those winnings by reinserting them into the machines. The \$20 may, in this manner, generate total wagers of \$40 or \$50 or more, as the winnings are recirculated, but the individual only remembers losing some or all of their original \$20. According to data in International Gaming and Wagering Magazine, the recycling of winnings causes gross wagers to be about seven times the amount of income which slot and blackjack players actually risk.

Oneida Gaming Facilities: Measuring Local Economic Impacts

When evaluating the impact of the gaming activities on the local economy, it is significant to note the source of the income. If the revenues are from local residents, the impact is to recirculate income originating from other local sources. If the gaming revenue originates from non-local residents, this constitutes an injection of new income into the local economy.

In the case of the gaming operations, the telephone and in-house surveys of gaming customers indicated that approximately 20 percent of these customers live within a ten mile radius of the Oneida gaming facilities. Thus, it is reasonable to assume that about 20 percent of the gaming revenues reflect local spending and 80 percent originate from outside the local economy. Of the 80 percent of customers who are from outside the local area, approximately 10 percent are from out of state, largely from the upper peninsula of Michigan and from the Chicago area of Illinois.

All of this indicates that of the \$37 million in gaming revenues which the Oneida Tribe retained from the \$375 million in reported gross revenue over a recent 11 month period, about \$30 million is the result of wagers by persons from outside the local area and \$7 million from customers residing in the local area. Also, of the \$30 million supported by wagers from outside the local area, about \$3 million is attributable to residents of other states.

The significance of these distinctions is that income originating from outside the local economy is usually viewed as having a more significant impact on the local economy than income which originates within the local area. To the extent that the gaming activity captures local income, the question is raised regarding where that income would have been spent had it not been wagered. If it is assumed that it would have been wagered in a non-local gaming facility, the presence of the Oneida gaming operation can be said to retain income locally which would otherwise have been spent elsewhere. To the extent that the money wagered would have been spent on other forms of entertainment locally, the net positive impact on the local economy of the gaming spending, is offset by the negative impact on those business firms which would have captured that income through other types of sales.

The telephone and in-house surveys of gaming participants conducted by professional research organizations on behalf of the Oneida tribe indicate that the Oneida gaming customers also participate actively in gaming at other locations, including other Wisconsin locations, as well as travelling to other locations including Las Vegas and Atlantic City. Based upon that evidence, it is appropriate to assume that in the absence of the Oneida gaming facility, a sizeable percentage of the money wagered by local residents would be wagered in other locations rather than spent on other types of entertainment locally. The specific amount involved, however, can only be estimated.

In viewing the impact of the Oneida gaming operation on the Green Bay area economy, it is reasonable to assume that this operation was responsible for adding \$30 million in income from outside the region to the area economy in the form of gross profits by the Oneida gaming operations between October of 1991 and September of 1992. It also seems reasonable to assume that at least half of the \$7 million retained after winnings from the local customers would have left the region had the Oneida facility not existed. This, then, represents income retained in the local economy which is equivalent to income attracted from outside the region.

It is more meaningful to consider the economic impact of the Oneida gaming activities on a monthly or annual basis. All of the above observations suggest that the Oneida gaming operation in 1992 added about \$3 million per month, or \$36 million per year directly to the economic base of the Green Bay area economy in the form of its gross profits which were supported by non-local customers. This income was used to pay wages and salaries to the employees of the gaming operations, to purchase products and services from local and non-local vendors, with the balance transferred to the tribe for the support of tribal programs.

A significant percentage of the money received by the employees of the gaming operations, as well as by the employees of the tribal operations supported by gaming revenues, and that received by local vendors, is respent in the local economy on a wide variety of

goods and services. This local recirculation of the non-local income added by the gaming operation generates a significant amount of additional income for the local economy. The estimated impact of the respending of income originating in the category of gaming, based upon the incorporation of labor costs and local vendor purchases (as reported in the Oneida gaming financial statements) into the input-output model of the Brown County economy developed by the Bureau of Business and Economic Research of the University of Wisconsin-Green Bay, indicates that every dollar of new income generated by the gaming enterprise will generate about \$1.05 in income in other activities within the local economy. The \$36 million per year added to the local economy in the form of gross profits of the Oneida gaming operation which are supported by non-local income serves as the basis for about \$12 million in direct purchases of labor and goods and services locally. As the employees and local vendors receive these payments, they respend some of them on local goods and services which generates an additional \$26 million in sales and labor income locally.

Part of the local vendor purchases are from units within the Oneida tribe including the Oneida print shop, the Oneida construction operations, and the accounting and personnel services of the Oneida tribe. In addition to these direct purchases of services from the tribe, all net income from the gaming operation are transferred to the tribe to support tribal programs. In the most recent year, the transfer has amounted to approximately 60 percent of the gross

profits from the gaming operation.

Approximately 240 tribal employees have been supported with these funds, in addition to the 380 (of the total of 423) employed by the gaming operation. The tribe is classified as a membership organization in the input-output model, and is estimated to generate about \$2.57 in local income for every \$1 of new non-local income. Thus, the \$21.6 million in non-locally supported net income transferred directly to the tribe by the gaming operation would generate an additional \$55 million as these funds are recirculated locally by the tribe's employees and the local vendors from whom the tribe purchases goods and services. The total local impact, as measured in sales revenues, then, would be approximately \$160 million per year from the combined impact of the tribe's gaming activities and the tribal programs supported by gaming proceeds.

Direct Impacts of Gaming Employee Spending.

It is useful to attempt to identify this impact in greater detail to better understand its effect on the area economy. For example, approximately \$5.8 million of the \$36 million in new income would be used to pay the employees of the gaming operation. The gaming operation employed 423 persons in the summer of 1992 at annual wages within ranges as follows:

Table 1

ANNUAL WAGE DISTRIBUTION; ONEIDA GAMING EMPLOYEES

Range in Annual Wages Paid	Number of Employees
\$10,000 to \$14,999	351
\$15,000 to \$19,999	49
\$20,000 to \$29,999	18
\$30,000 to \$39,999	4
\$40,000 and over	1

Source: Oneida Tribe; M.I.S. Office. (Does not include tips)

Using the information from expenditure surveys, it is possible to estimate the spending done in the local area by the gaming employees. The total spending will vary by income group. For example, lower income families spend higher proportions of their income on necessities such as food and shelter, while higher income people will spend more on what are viewed as luxury items as well as purchasing more insurance, and engaging in other forms of saving. Based upon the application of expenditure tables to the income distribution for the Oneida gaming employees, the resulting spending is reflected on Table 2.

Table 2
ANNUAL SPENDING BY ONEIDA GAMING EMPLOYEES AND
RESULTING EMPLOYMENT IN GREEN BAY AREA BY SECTOR

	<u>Spending</u>		<u>Employment</u>	
	Total	Local	Total	Local
			(Full time equiv.)	
Groceries (Food at Home)	\$521,407	\$469,267	5.4	4.8
Eating Out (Food away from Home)	349,386	262,040	17.4	13.0
Housing:				
Mortgage or Rent Payments	934,547	841,092	6.2	5.6
Utilities and Operations	728,174	655,356	2.1	1.9
Furnishings	223,292	167,469	2.2	1.7
Clothing (Apparel)	289,673	217,255	5.1	3.9
Transportation:				
Car Payments (Car Dealers)	500,996	375,747	2.2	1.6
Gas and Oil (Service Stations)	249,501	187,126	1.9	1.5
Maintenance and Other Car Exp.	347,194	260,395	6.6	5.0
Public Transportation	50,439	37,829	1.5	1.1
Health Care	476,449	428,804	9.5	8.6
Entertainment	235,364	176,523	4.5	3.4
Haircare, Laundry & Personal Care	93,443	84,098	3.7	3.3
Reading & Education	101,463	91,317	2.2	2.0
Alcohol & Tobacco Products	150,248	135,223	6.0	5.4
Miscellaneous	112,593	101,334	2.3	2.0
Cash Contributions	137,756	123,980	2.8	2.5
Life and Other Insurance	48,750	43,875	0.5	0.4
Pensions and Social Security	249,327	24,933	<u>1.2</u>	<u>0.1</u>
Totals	5,800,001	4,683,663	83.3	67.7

Source: Calculations based upon U.S. Dept. of Commerce, Consumer Expenditure Survey, 1988/89, Midwestern Region by Income. and Census of Business Data.

The amount identified as local spending reflects where the purchases by the gaming employees are likely to occur. For example, almost all of the gaming employees live in the local area and purchase their groceries at local grocery stores. As a result, it is estimated that about ninety percent of the \$450,000 which would be spent by gaming employees on groceries (about \$405,000 per year) would be spent in grocery stores in the Green Bay urban area.

Grocery stores, on average, employ about one person for every \$100,000 in sales. This would suggest that the grocery purchases by the Oneida gaming employees would support 4.5 employees in the grocery stores in Wisconsin, with most of these being in the Green Bay urban area. The last two columns in Table 1 reflect the number of employees in various activities which are directly supported by the spending of the Oneida gaming employees.

The total wage and salary income of about six million dollars per year which is supported by non-local customers of the Oneida gaming operations, then, supports over four million dollars in local spending and 68 jobs in area retail and service establishments. This reflects only the direct and immediate impact, however. As the employees of the various establishments receive their wages and salaries, they, in turn, also spend significant portions of their income in these local establishments. For example, each of the 4 grocery store employees supported by the Oneida gaming employees will, in turn, purchase clothing, cars, and other items

from area retailers. By this process, the income brought to the local area by the Oneida gaming operation is recirculated to generate added local income.

A very simple graph (Figure 1) can be used to illustrate this concept. If we start with \$1 of new outside income injected into a local economy, and assume that the recipients of that income respend \$.80 locally, the next group receiving the income spend \$.60 of that \$.80 locally, and the next group \$.40 of their new income locally, we discover that the original \$1 has now generated a total of \$2.80.

ILLUSTRATION OF THE MULTIPLIER EFFECT

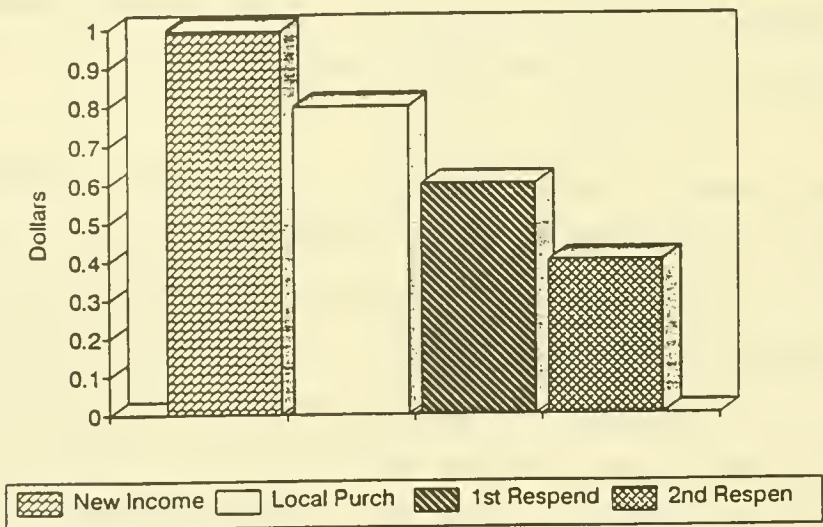


Figure 1

Applying this concept to the gaming employees in Figure 2 we can demonstrate that these employees received about \$6 million in wages in the most recent year. It is estimated that they spent about \$5 million of that amount locally. The merchants and their employees who were the beneficiaries of that spending spent about \$3.5 million of that resulting income locally and the next group spent \$2 million locally. The \$6 million in wages thus generated a total of \$16.5 million in new income after tracing the respending only to the third group of recipients.

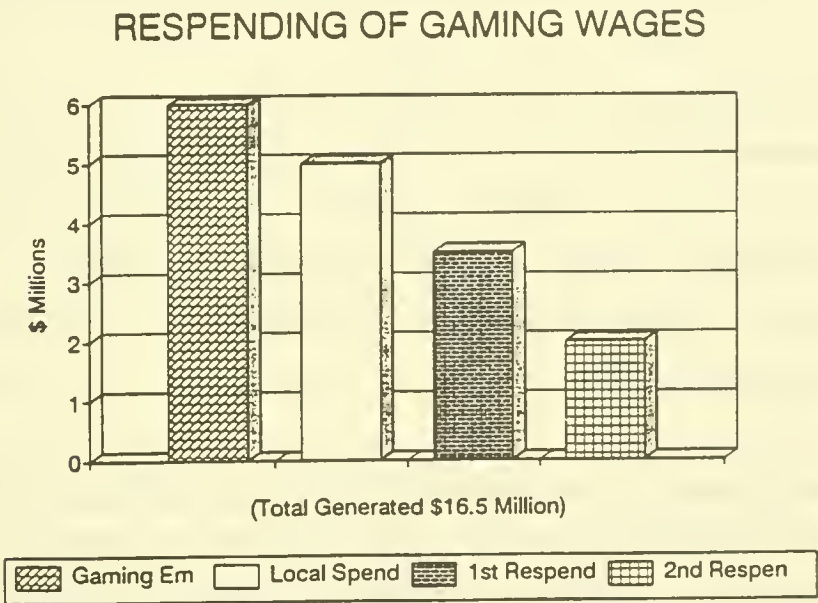


Figure 2

Measuring the impact of this process on each sector of the local economy over many rounds of respending requires a rather sophisticated model. In this case, the model used is an input-output model of Brown County developed by the author of this report at the University of Wisconsin-Green Bay, Bureau of Business and Economic Research.

Measuring the Total Direct and Indirect Impacts of the Gaming Operation

The model developed at the University of Wisconsin-Green Bay, which is based upon the general model developed at the University of Nebraska, is capable of estimating the local impact of spending in each of the many sectors of the economy. As noted above, that model suggests that when all of the spending by a gaming facility, such as the Oneida gaming operation, is considered, the total income generated in the Green Bay area will be about 2.05 times the amount spent locally on labor and purchases from local suppliers by the gaming operation.

Using this concept, and incorporating the spending on local labor and from local suppliers by both the gaming operation and the tribal programs directly supported by the gaming operations into the input-output model, the resulting impacts on the local economy can be identified by sector, as reported in Tables 3 and 4. It is important to note that Tables 3 and 4 reflect expenditures out of

operating costs only for the gaming operation, and do not reflect capital outlays for either construction or equipment. As noted elsewhere in this report, the Oneida tribe receives the entire net profit from the gaming operation and reallocates portions of these proceeds for capital outlays by the gaming operation for both construction and equipment. The capital outlays for equipment are in the millions each year and are almost totally from non-local vendors. These outlays for equipment are not reflected in Tables 3 and 4. Construction spending is treated in a separate section later in this report.

Separating Gaming and Tribal Program Impacts

Two tables (Tables 3 and 4) are presented to demonstrate the impact of the gaming operation with and without the transfer of funds to the tribe for the support of tribal programs. The gaming facility spends only about 32 percent of its gross profits on local labor and supplies. As a result, the multiplier effect of the gaming operation alone is quite small, with the recirculation of its gross profit generating about an equal amount in local spending. (Table 3) However, when the impact of the tribal programs supported by the gaming operation is added (Table 4), the amount of gaming revenues which are spent locally increases to 92 percent, and the impact is increased dramatically as the recirculation includes a significant percentage of the spending by the tribe and its employees on local goods and services.

Table 3

**DIRECT AND INDIRECT SALES AND EMPLOYMENT IMPACTS
ON THE LOCAL ECONOMY OF THE ONDEIDA GAMING OPERATIONS
(Gaming Only: Assumes No Transfer of Funds to Tribal Programs)**

	Direct Impacts Resulting from Non-Locally Supported Local Purchases by the Oneida Gaming Operations		Indirect Impacts of Recirculation of New Income to Local Economy from Oneida Gaming.	
	Local Purchases	Local Employment	Sales by Local Firms	Local Employment
Agriculture	\$ 0	0	\$ 396,000	11
Mining	0	0	10,800	0
Construction (Repair & Main)*	468,000	6	324,000	4
Manufacturing-non-durables *	234,000	2	1,818,000	18
Manufacturing-durables	0	0	468,000	5
Transportation	468,000	8	1,188,000	20
Communications	140,400	0	579,600	1
Utilities	86,580	0	1,245,420	9
Wholesale Trade	23,400	0	1,020,600	4
Retail Trade	0	0	1,980,000	24
Finance, Rl.Est., & Insur.	234,000	5	3,114,000	68
Lodging Facilities	93,600	3	158,400	5
Personal Services	0	0	324,000	9
Business Services *	3,744,000	50	1,908,000	25
Eating & Drinking Places	468,000	16	972,000	32
Amusements (excludes gaming)	0	0	216,000	9
Health Services	14,040	0	1,245,960	29
Education	0	0	252,000	7
Membership Organizations	0	0	432,000	8
Households (Labor)	<u>5,760,000</u>		<u>8,064,000</u>	
Total	\$11,734,020	90	\$25,716,780	288

* These local purchases include repair and maintenance, printing, accounting, and personnel services purchased from other tribal entities

Oneida Gaming Non-Locally
Supported Gross Profit. \$36,000,000

Local Payrolls Supported
by Non-Locally Supported Gaming Purchases \$13,824,000

Local Sales Supported
by Non-Locally Supported Gaming Purchases \$23,626,800

Local Employment Supported
by Non-Locally Supported Gaming Purchases:

Gaming Facility	380 (of total of 423)
Direct Purchases	90 (Incl. Oneida printing, const., adm. emp.)
Indirect Sales	<u>288</u>
Total	758

Table 4

**DIRECT AND INDIRECT SALES AND EMPLOYMENT IMPACTS
ON THE LOCAL ECONOMY OF THE ONDEIDA GAMING OPERATIONS**
(Includes Impact of Tribal Programs Supported by Transfer of Net
Profits from Gaming.)

	Direct Impacts Resulting from Non-Locally Supported Local Purchases by the Oneida Gaming Operations (Transfer to Tribe Treated as Direct Purchase.)		Indirect Impacts of Recirculation of New Income to Local Economy from Oneida Gaming & Supported Tribal Programs.	
	Local Purchases	Local Employment	Sales by Local Firms	Local Employment
Agriculture	\$ 0	0	\$1,440,000	41
Mining	0	0	36,000	0
Construction (Repair & Main)*	468,000	6	1,620,000	22
Manufacturing-non-durables *	234,000	2	7,686,000	77
Manufacturing-durables	0	0	1,440,000	14
Transportation	438,000	5	4,218,000	67
Communications	140,400	0	1,911,600	4
Utilities	86,580	0	4,233,420	29
Wholesale Trade	23,400	0	3,144,600	12
Retail Trade	0	0	5,256,000	63
Finance, Rl.Est., & Insur.	234,000	4	9,558,000	109
Lodging Facilities	93,600	3	518,400	17
Personal Services	0	0	1,008,000	29
Business Services *	3,744,000	50	5,270,000	84
Eating & Drinking Places	468,000	16	3,024,000	101
Amusements (excludes gaming)	0	0	756,000	30
Health Services	14,040	0	3,441,960	80
Education	0	0	648,000	17
Membership Organ. (Tribe)	21,600,000	240	3,708,000	71
Households (Labor)	<u>5,760,000</u>		<u>31,284,000</u>	
Total	\$33,334,020	330	\$130,573,980	867
Oneida Gaming Non-Locally Supported Gross Profit.			\$36,000,000	
Local Payrolls Supported by Non-Locally Supported Gaming Purchases			\$37,044,000	
Local Sales Supported by Non-Locally Supported Gaming Purchases			\$126,864,000	
Local Employment Supported by Non-Locally Supported Gaming Purchases:				
Gaming Facility				380
Direct Purchases (Includes Transfer to Tribe)				330
Indirect Sales				<u>867</u>
Total				<u>1,577</u>

What this analysis demonstrates is that while gaming facilities do have significant impacts on the state and local economies by attracting outside income or retaining local spending, a much greater impact occurs from an operation such as the Oneida gaming operation (or other self-managed American Indian gaming facilities) because of the transfer of net income to the tribe. If the net income of a gaming operation were transferred out of the area or out of the state, the local and state impacts would be less than most other types of economic activity. When the net income is retained within the area and the state by transferring it to a relatively labor intensive activity whose employees live and spend in the area, and which purchases goods and services in the region and the state, (e.g. the Oneida tribe) the impact is among the largest of any types of economic activity. As noted in Tables 3 and 4 above, local indirect spending is less than two times the direct spending by the gaming facility when the transfer to the tribe is not included. The local indirect spending rises to four times the direct spending when the impact of the transfer to support tribal programs is included.

Employment Impacts

The impacts of the attraction of outside income and retention of local income by the Oneida gaming facility on sales and payrolls can also be reflected in the impact on employment. As noted at the bottom of tables 3 and 4, the direct and indirect spending by the

gaming operation which is supported by non-local customers adds 758 jobs in the local economy, while the inclusion of the tribally supported programs increases the direct and indirect employment impacts to an estimated 1,577 jobs. This number includes the average of about 380 jobs supported by non-local spending for the gaming facility during the summer of 1992, a share of the jobs in the Oneida print shop, the Oneida repair and maintenance construction contracting operation, the Oneida accounting, personnel, and planning departments, and in the many tribal programs supported by gaming revenues. It also includes local non-Indian employment in almost every sector of the economy as the purchases of the gaming and tribal employees, and the purchases of the gaming operation and the tribal programs, support a wide variety of businesses which, in turn, buy some of their inputs locally, and hire local labor, who, in turn, respend their income.

It is sometimes argued that each enterprise in the local economy contributes to the entire income generation and employment process and to single out any entity as being the origin of that income is inappropriate. This is the reason for stressing the importance of the fact that the impacts identified in Tables 3 and 4 are limited to the impact from revenue originating outside the local economy or which would otherwise have escaped to other locations. Fully 90 percent of the impacts identified in the tables are the result of wagering by non-local residents, and about five percent is the result of income retained which would probably have been wagered

elsewhere. Thus, this is truly income which would not have been injected into the Green Bay area economy if the Oneida gaming facility were not present.

It is, perhaps, useful to note that no attempt has been made here to determine whether the winnings from the gaming activities would redistribute income regionally. It is assumed that the geographic distribution of winners parallels the geographic distribution of players.

Visitor Spending

In addition to wagering at the Oneida gaming facilities, most people who travel from outside the immediate area will engage in other types of local spending. No specific surveys of this type of spending by Oneida gaming customers have been conducted recently, but other studies provide a basis for a reasonable estimate of these expenditures. There are two basic models of casinos in the U.S., namely, the Las Vegas model and the Atlantic City model. In Las Vegas, casinos place a large emphasis on providing hotels, big name entertainers, etc. to entice people to stay for extended periods. According to studies reported in the International Gaming and Wagering magazine, only one third of the revenue for Las Vegas establishments is attributable to wagering. In Atlantic City, the emphasis is on attracting the large populations from the most heavily populated area of the country which surrounds this location, usually for short stays. A large majority of the

revenues for facilities in Atlantic City originate from customer wagers.

The Oneida facility is patterned on the Atlantic City model and most customers drive to the facility, or come by bus, and return to their homes in Wisconsin on the same day. According to the recent market study of the gaming facility completed for the Oneida Tribe, the Irene Moore Activity Center (Bingo/Casino) attracted about 175,000 customers in 1991 with about 17 percent or about 30,000 of these customers staying in hotels. The large majority of the hotel customers stayed at the Radisson, the hotel owned by the Oneida Tribe which is adjacent to the gaming facilities.

Gaming, like most other entertainment services, is characterized by concentrations of customers. Just as it is estimated that 80 to 90 percent of the fish are caught by 10 percent of those who fish, high percentages of the gaming revenues originate with the most frequent players. Among slot players in the surveys conducted for the Oneida gaming facility, the average number of visits to the facility each year is about 11 or 12 times per year, but fully 13 percent of the slot players play more than twice each week. The frequent players are generally those who drive to and from the facility in a single day and are less likely to stay in hotels and spend in other local business facilities.

The Green Bay Visitor and Convention Bureau conducted a study of

visitor spending in 1990 which was published in November of 1991. That study estimates that the day trip visitors contributed only 6 per cent of the total visitor spending in Brown County. The bulk of the visitor spending, then, is associated with those who stay in hotels. It is estimated that the 30,000 gaming customers who stayed in hotels stayed an average of 2 nights each, and spent approximately \$125 locally per day, per person, on other than gaming activities as follows:

Table 5

NON-GAMING SPENDING BY NON-LOCAL VISITORS TO ONEIDA GAMING
FACILITIES AND RESULTING LOCAL SALES AND EMPLOYMENT IMPACTS

	Direct Spending (Per Person/Day)	Indirect Spending (Recirculation)	Total Annual Spending (\$mill.)	Employment
Lodging	\$30	\$ 68	5.8	196
Food and Drink	50	123	10.4	346
Transportation (Largely gasoline)	15	36	3.1	24
Other (largely shopping)	<u>30</u>	<u>72</u>	<u>6.1</u>	<u>74</u>
Totals	\$125	\$291	\$25.4	640

While this level of visitor spending is below that for the average area visitor studied by the Visitor and Convention Bureau, other studies in Michigan suggest that gaming customers are less inclined to spend on other activities than the general tourist. The total visitor spending by those gaming customers who stay in hotels, therefore, is estimated to be about \$7.5 million per year, and that for single day visitors about \$500,000, for a total of \$8 million per year in non-gaming expenditures by visitors who come to the Oneida gaming facility.

Because these are non-local sources of new income attracted to the local area, it is appropriate to also consider the impact of the recirculation of this spending as local laborers and suppliers respend the income locally. Based upon the above described model, the estimated indirect spending resulting from the local recirculation of visitor spending would add another \$17.4 million per year, for a total direct and indirect impact from visitor spending of \$25.4 million per year.

This expenditure figure can be converted into an employment impact by dividing the sales by the sales per employee for each of these sectors. As noted in Table 5, visitor spending by non-local Oneida gaming customers who stay in a hotel, and the recirculation of that spending in the local economy, would support about 640 full-time-equivalent jobs.

The Impact on the Oneida Tribe.

As noted above, in the most recent year, about 70 percent of the gross profits from the gaming activities were transferred directly to the Oneida tribe in support of tribal programs. The Business Committee of the Oneida Tribe (its governing body) receives the gaming net profits and, in turn, allocates to the gaming operation the funds which it approves for expansion. Current and future gaming expansion has been allocated about 18 percent of the amount transferred to the tribe by the gaming operation. In addition to the transfer of net profits, about another 10 percent of gaming gross profits are used to purchase goods and services from tribal enterprises and departments. These combined revenues represent a substantial proportion of the total tribal budget with the balance originating largely from treaty obligation funds of the Federal Government including contracts with the Bureau of Indian Affairs, with the Indian Health Service (of U.S. Public Health), Johnson-O'Malley education grants, Housing and Urban Development grants, and special competitive grants from ANA, SBA, and other similar agencies. The gaming revenues represented 66 per cent of total funds from all sources for tribal programs in the most recent fiscal year. This does not include the direct purchases of services from tribal entities such as the print shop, construction unit, or accounting and personnel services. The second largest source of funds for the tribe is state and federal funding based upon treaty obligations, grants, etc. (Table 6)

Table 6

ONEIDA TRIBE OF INDIANS OF WISCONSIN; BUDGET 10/1/91 TO 9/30/92

Source of Funds:	Percentage of Total
Gaming	66.0 %
Federal/State Funding	22.9
Retail	2.9
All Other	8.2
Use of Funds:	
Education	9.7 %
Economic & Community Development & Employment	7.1
Human Services, Housing, and Health Care	22.8
Environmental, Including Water & Sewer Dev.	1.4
Trust Funds, Mortgage Payments, and Land	
Acquisitions and Improvements	11.7
Legal and Litigation Costs	1.5
Capital Equipment, Depreciation, and Reserves	1.8
Current Gaming Expansion	8.3
Future Gaming Expansion	9.7
General and Per Capita Reserves	23.0
General Overhead	3.0

The Oneida personnel office reports that it issued an average of 800 payroll checks per week from January through September of 1992. This figure includes the gaming employees which suggests that there were about 380 people employed by the tribe other than those engaged directly in gaming, during the most recent year. The weekly employment levels for the combined operations of the Oneida tribe rose to over 1,000 in September of 1992. As noted earlier in this report, it is estimated that about 240 of the tribal program employees were supported by gaming revenues in the most recent fiscal year in addition to the 420 employed directly by the gaming operation.

The unemployment rate on the Oneida reservation prior to the development of gaming was between 25 and 30 percent of the adult labor force. On page 38 of the Oneida Industrial Park Analysis, Oneida Tribe of Wis., Inc., June, 1973, it was observed that 27% of those adults under 50 were unemployed, while 33% of those over 50 were unemployed. In the report entitled Employability Factors and Needs of Wisconsin Tribal Indians, published by the Wisconsin State Employment Service in 1967, Table IV on p. 13 reports the unemployment rate for the Oneida adult population at 24.5% in Outagamie County, and 21.3% in Brown County. The most recent estimate places the unemployment rate for the Oneida adult population at about 14 percent.

It is worth noting that the gaming operation was recently unable to fill many vacancies because of the requirement that gaming employees be members of the Oneida tribe, and no qualified persons were available. This limitation is being changed by the tribe to permit the employment of other than Oneida tribal members in the gaming facilities. Clearly, the unemployment rate has been reduced dramatically by the addition of the jobs for tribal members at the gaming facility and in those tribal programs supported by gaming revenues.

Construction Impacts

As noted above, the Oneida gaming operation transfers all of its net profits to the Oneida tribe. The tribe, through its governing bodies, then determines how much should be allocated back to the gaming operations for their capital budget. The capital outlays, therefore, are not included in the regular purchases of the gaming operation as shown in Tables 3 and 4 above. Also, capital expenditures vary significantly from year to year and are not closely related to the actual annual volume of sales (wagers). For these reasons, the impact of capital outlays is treated separately.

Equipment expenditures are largely associated with the purchase of gaming machinery and equipment. There are no local sources of such equipment and, as a result, these purchases all go to non-local vendors and have no direct local impact.

Construction spending is divided between repair and maintenance construction and new construction. Repair and maintenance construction is included in the local spending by the gaming operation on Tables 3 and 4. It is largely contracted to the Oneida tribal contractors.

New construction is contracted to general contractors who, in turn, subcontract with some local contractors. The Oneida tribal contractors are included among the subcontractors. Other local

contractors are also included. Information on the extent of local subcontracting was obtained directly from the general contractors on each project for the most recent fiscal year. The results are reflected on Table 7.

Table 7

Oneida Gaming Related Construction Spending

October 1991 to September 1992

Based On Tribal Fiscal Year From September 92 to October 91

Source: Active Assets List August 1992, Provided By M.I.S.

<u>Description</u>	<u>Cost</u>	<u>Local</u>	<u>%</u>	<u>Non-Local</u>	<u>%</u>
Temporary Casino IMAC	\$1,900,000	\$825,000	43.40%	\$1,075,000	56.60%
Air View Club Renov.	\$825,000	\$30,000	100.00%	\$0	0.00%
Parking Lot Expan.	\$209,289	\$84,175	40.10%	\$125,614	59.90%
Accousitc Panels	\$5,943	\$5,943	100.00%	\$0	0.00%
Little Casino Hwy S4	\$448,978	\$246,938	55.00%	\$202,040	45.00%
Bldg. Improv. to IMAC	\$102,355	\$102,355	100.00%	\$0	0.00%
HEVAC Upgrsde	\$94,690	\$94,690	100.00%	\$0	0.00%
Sally Port System	\$25,795	\$17,283	67.00%	\$8,512	33.00%
Cosatron System Phs. II	\$11,000	\$9,130	83.00%	\$1,870	17.00%
Total	\$2,828,549	\$1,415,514		\$1,413,036	

There were a total of nine (9) construction projects for the Fiscal year 1992. Three (3) of these projects are still in progress. The total expenditures for the Oneida Gaming related construction are \$2,831,136. Just over 50 percent of the construction spending was locally contracted. Local is defined as those contracts that are

negotiated by construction companies in Brown County and a small portion of Outagamie County which is located within the Oneida Reservation.

It should be noted that without the Temporary Casino construction the total expenditures are \$931,136 and 63.7 percent are locally pledged to companies in the Brown County area. The other 36.3 percent are then contracted to companies within a ninety mile radius. Excluding the Temporary Casino Construction project the local portion of the contracts exceeds 63 percent.

In addition, when the Oneida Tribe contracts out of the local area, a subcontracting preference for local and/or tribal contractors is placed in the contract. Because many of the tribal contractors are not capable of contracting for large construction projects the clause allows them to benefit from any tribal construction.

Based upon the model being used in this analysis to measure the extent of the recirculation of local expenditures, each dollar of local construction spending will generate an additional \$2.80 in local spending for labor and supplies as the receipts are respent locally. This would suggest that the \$1.4 million, of the total gaming related construction spending, which is contracted locally, will generate about another \$4 million in local income. Based upon sales employment ratios, this would suggest that this spending supported about 8 jobs directly in construction and about another

20 jobs from the local purchases by the construction firms and their employees, and the continuous recirculation of these proceeds locally.



The Economic Benefits of American Indian Gaming Facilities in Wisconsin

A Study Commissioned by the Wisconsin Indian Gaming Association & the University of Wisconsin-Cooperative Extension. March 1993.

James M. Murray, PhD., Principal Investigator

ACKNOWLEDGMENT

I want to thank the tribal chairpersons, the Wisconsin Indian Gaming Association representatives, the liaison persons for the cooperating tribes, the accounting staffs of the tribes and the gaming operations, and the gaming employees who administered the survey instruments, for their help in obtaining the necessary primary data for this analysis. I could mention many names, but I would certainly miss some, and there were many involved with whom I did not make direct contact. I realize that these requests are made in addition to your full-time responsibilities, and I do appreciate the extra effort which was put forth. Thank you all, very much! I assume full responsibility for whatever was done with your data after you delivered it to me.

Jim Murray

THE ECONOMIC BENEFITS OF AMERICAN INDIAN GAMING
FACILITIES IN WISCONSIN

SUMMARY:

- A larger percentage of Indian people are officially poor than is true for any other ethnic group in the U.S. Gaming is the only activity to date which has offered the promise of raising overall levels of income and reducing or eliminating involuntary unemployment in American Indian communities (nations).
- Gaming not only offers the prospect of reducing poverty and unemployment for American Indian people, but supports a significant volume of jobs for non-Indian people as well as sales and employment for non-Indian business firms throughout Wisconsin.
- At the end of 1992, there were over 4,500 people directly employed by American Indian gaming facilities in Wisconsin, of which about 2,500 were enrolled members of American Indian communities (nations), and 2,000 were non-Indian people.
- Of those employed by the gaming facilities, more than one-half had been unemployed and over 20 percent had been receiving some form of welfare benefits prior to being employed by these operations. Thus, about 1,400 persons were removed from the unemployment roles and 820 from the welfare roles through employment in gaming. This both reduces the cost of state supported transfer payments, and increases the income and purchasing power of those employed.
- The average income for gaming employees was just over \$15,000 per year in 1992, and the income from gaming employment represented 100 percent of family income for over two-thirds of the gaming employees.
- The gaming operations spent about \$62 million in 1992 on a variety of goods and services, over ninety percent of which were purchased from Wisconsin suppliers.

- In the past three years, over \$30 million has been spent on construction by the gaming facilities, with over ninety-five percent of the contracts or subcontracts going to Wisconsin firms.
- The eleven American Indian communities (nations) in Wisconsin received about \$135 million as the net profits from the gaming operations in 1992. Over seventy percent of these proceeds were spent on housing, health services, elderly care, community and economic development, education, and land purchases by the tribal governments on behalf of the Indian people. Most of the balance is being held in reserves as these communities develop long range plans for self-determination based upon the diversification of their economies.
- Indian gaming facilities have attracted large numbers of visitors to the areas where they operate. In addition to their spending on gaming, these visitors also purchase gasoline, meals, lodging and other goods and services from local businesses. Non-gaming visitor spending in 1992 is estimated to have been about \$277 million, with almost one-fourth of that by out-of-state visitors to the gaming facilities. Sales by eating and drinking places as well as all retail sales, rose dramatically in the counties with casinos between 1988 and 1991.
- Over 10,000 jobs were supported directly in the gaming facilities, construction firms, and firms making non-gaming sales to casino visitors in 1992. As the income received by these employers was recirculated, an additional 22,000 jobs were supported throughout Wisconsin. Just under twenty percent of the jobs generated directly and indirectly by gaming activities were supported by out-of-state customers.

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THE ECONOMIC BENEFITS OF AMERICAN INDIAN GAMING
FACILITIES IN WISCONSIN

Introduction

The percentage of American Indian persons and households which are officially classified as below the poverty level by the U.S. Department of Commerce has been larger than that for any other ethnic group for as long as such statistics have existed. According to the 1990 Census report on Social, Economic, and Housing Characteristics for Wisconsin, 62 percent of the Indian people living on reservations in Wisconsin were officially poor in 1989. Significant efforts to improve the economic circumstances of the Indian people on the part of the federal government have included education, relocation, industrial development, and commercial development programs. After decades of attempting to bring the Indian people to an income level equivalent to that of other ethnic groups, the Indian people, as a group, remain the poorest of the poor in the U.S. today.

This is not to suggest that substantial improvements have not occurred in the Indian communities. Indeed, in many respects, the improvements in housing, educational facilities, programs for the elderly, and the general infrastructure in Indian communities has been close to revolutionary. In one generation, many of these locations have emerged from having few homes with plumbing and electricity to having most people living in relatively comfortable homes with complete plumbing, electricity, sanitation systems, and modern appliances. In spite of these dramatic improvements, however, the unemployment rates and poverty rates for Indian communities in the 1980's continued to be two to seven times higher than the averages for the U.S.

It is not the purpose of this study to examine the reasons for the inability of the many federal and other programs to improve the relative economic situation of the American Indian communities. The above observations are made here only to help non-Indian people understand the significance of gaming as a new economic base for Indian communities in the context of their history and circumstances. After decades of frustration with economic development efforts, gaming is the one activity

which offers a clear opportunity to have many Indian communities reduce poverty and unemployment levels to at least the level typical of surrounding communities.

One purpose of this study, then, is to document the impact of gaming on the American Indian people within the state of Wisconsin both individually and collectively. Beyond that, the study will demonstrate the impacts which the gaming facilities have on the economy of Wisconsin as a result of the added employment generated for both American Indian and non-Indian people, the purchases of the gaming facilities from state suppliers, the non-gaming spending in Wisconsin by gaming customers both from within the state and from other states, and the employment, purchases from suppliers, and other economic impacts from the American Indian communities (nations) which receive the net profits from the gaming operations.

This study focuses exclusively on economic impacts and does not attempt to address moral concerns or psychological issues relating to gambling. It is the position taken here that people must make their moral choices individually when they become mature adults. With respect to compulsive gambling, the issue is one of addictive behavior which manifests itself in many forms, and it is the behavior problems of individuals which need to be addressed rather than limiting the choices of the many for the sake of the few.

The Data Base and Methodology.

Most of the data for this study have been supplied by the eleven Indian communities which operate the 15 gaming facilities in Wisconsin. A series of forms were supplied to these communities including an employee survey, a customer survey, a gaming facilities survey, and a survey of tribal expenditures. It was agreed, in exchange for the cooperation of these communities, that the data would not be presented in a manner which would disclose proprietary information about the gaming operations in any single community but would be aggregated to reflect the overall impact of the collective American Indian gaming activity on the state.

Nine of the Wisconsin Indian communities (nations) provided extensive data in response to the surveys. Two communities chose not to do so. In a few cases the data were not gathered in a consistent fashion and the results will reflect reporting by fewer than the nine communities which cooperated with the study. Because employment data were available for all eleven communities, estimates of other variables will be made for the entire state based upon the patterns revealed by the reporting communities. In each case, the number of community reports on which these estimates are based will be reported in the text. Also, the several tribes (nations) use different fiscal years for their accounting reports. Every effort has been made to translate these into data reflecting the calendar year 1992 but some inconsistencies are unavoidable.

The approach used here will be to identify the direct impacts of the Indian gaming operations as a result of the construction and operation of these facilities. The impacts of the gaming operations are greatest with respect to the local communities in which they operate. While these impacts will be discussed, the agreement not to reveal proprietary data for any individual facility will limit the ability to document local impacts to any great extent. Detailed statistical estimates of the economic impacts will be largely restricted to the state level.

Beyond the direct employment by the gaming operations, indirect increases in employment and sales for people and business firms in the state are generated by the added activity in gaming. The most obvious example is the impact resulting from the transfer of profits to the Indian tribes (nations) and the resulting employment and purchases generated by the programs supported by these revenues. Also, as gaming employees and suppliers respend their income in Wisconsin, added income and employment are generated. An economic model known as an "Input-Output Model" will be used to trace the indirect impacts on the state of the gaming facilities.

It should be noted that the earliest high stakes gaming operations were bingo facilities (Class II gaming) initiated in response to court decisions in the mid 1970's, while the casino-type facilities (Class III gaming) did not get started until after the passage of the Indian Gaming Regulatory Act in 1988. As a result, most of the impact of these facilities has occurred in very recent years with some very large new or expanded facilities being initiated in 1992 and 1993. The secondary data to document the impact of these newer facilities is frequently not available at this time, but every effort will be made to present as much of it as possible.

Terminology

In discussing gaming activity, it is useful for the unfamiliar reader to understand some of the terms used in this industry. There are some differences in usage, but these definitions are widely accepted:

Handle (or Total Wager): This includes the total amount bet by gaming customers, including the amount of winnings which are rewagered.

Payout (or Customer Winnings): The amount paid in winnings, usually expressed as a percentage of the handle. For example, slot and video machines are typically programmed to pay out between 90 percent (Atlantic City rate) and 95 percent (Las Vegas rate) of the total amount wagered.

Drop (or Spending or Amount Risked): This is the amount customers bring to the gaming facility to wager.

Take (or Casino Winnings): This is the gross profit of the gaming facility. This is the basis for the payment of wages, purchases of supplies, and other costs incurred by the facility, with the balance being the net profit.

There is often much confusion among the public with regard to the amount of money being made by gaming facilities. The *handle* in casinos for table games and slot and video machines is typically seven to eight times the *drop* because of the high propensity of customers to rebet their winnings. The *handle* is not

indicative of the money being made by gaming operations but is, rather, an accounting mechanism to monitor the volume of activity. In some ways, a gaming operation is not unlike a bank, with the amount of money passing through it being a large multiple of the amount actually realized by the enterprise.

The economic impact of the gaming operations is a function of the take or casino winnings, which typically represent about six percent of the *handle*, or forty percent of the *drop*. About thirty percent of the take is typically required to cover the cost of labor, supplies, and other operating expenses. For those operations which have contracted with investors to finance the construction and manage the facility, an additional thirty to forty percent of the Take will be paid in a management fee. The balance is the net profit for the tribe which operates the facility.

Each of the Indian communities (nations) have their own policies for handling gaming revenues. In some, the total net profit accrues to the tribal budget and tribal governing officials determine how much will be returned to the gaming operation for capital expenditures (e.g. added buildings, facilities, gaming machines, etc.) while others allow the gaming operation to make capital expenditures out of earnings with the balance reverting to the tribal budget. As noted above, several of the smaller communities have contracted with management groups to operate the gaming facilities, and receive the net profit after all costs and management fees have been covered.

Direct Employment Impacts

GAMING EMPLOYMENT IN WISCONSIN

(TOTAL EMPLOYMENT, 4TH QTR 1992, 4,500)

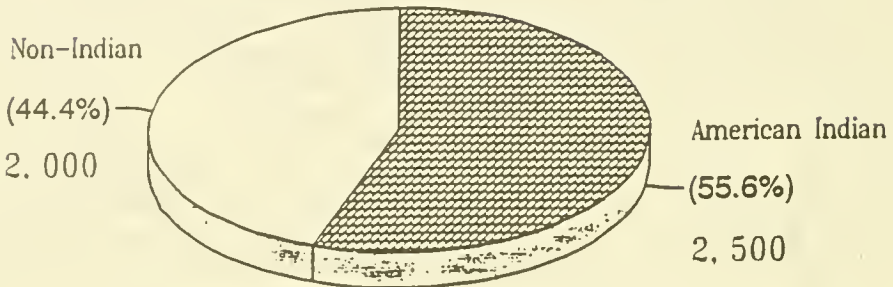


FIGURE 1

As noted in Figure 1, approximately 4,500 adults in Wisconsin were employed at the end of 1992 by the 15 American Indian gaming facilities currently operating in the state of Wisconsin. About 2,500 (55 %) of these employees are enrolled members of federally recognized Indian tribes (nations), while 2,000 are non-Indian people.

The number employed by these facilities has been growing very rapidly since the passage of the Indian Gaming Regulatory Act in 1988, and the resulting compacts between the eleven Wisconsin tribes and the state of Wisconsin to sanction casino-type gaming operations at the 15 locations. The analysis of the economic effects will use the employment figures provided by the gaming operations as of the end of 1992 as a basis for the impact estimates.

Prior to being employed by the gaming facilities, approximately one-half of the gaming employees were employed, many in part-time seasonal jobs, while just over 31 percent were unemployed, and more than 18 percent were unemployed and receiving some type of transfer payment, such as AFDC or Relief to Needy Indian Persons.

This suggests that approximately 1,400 persons were taken off the unemployment roles, and 820 persons were removed from the welfare roles by being employed in American Indian gaming facilities. (Figure 2)

PRIOR STATUS OF GAMING EMPLOYEES

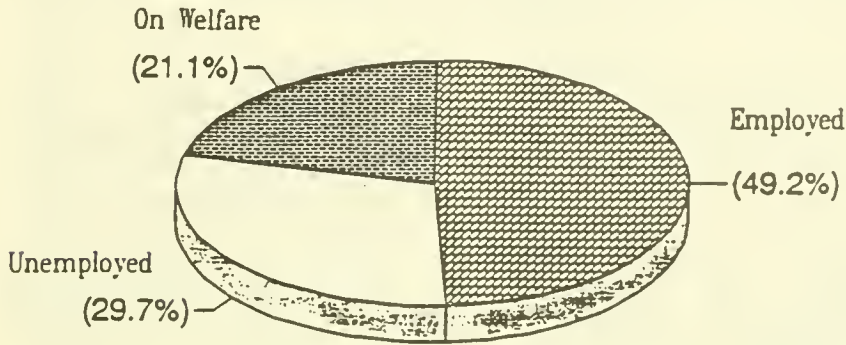


FIGURE 2

One of the reporting tribes noted that the A.F.D.C. caseload for Indian families in the county where the gaming operation is located had declined by thirty percent during the first 18 months of operating the gaming facility. In that same period, there was a 55 percent reduction in the number of persons from the local tribe receiving Relief to Needy Indian Persons. A second community provided documented evidence that the AFDC caseload in the community had dropped by 29 percent and the Relief for Needy Indian caseload by 47 percent from 1987 to 1992 as a direct result of gaming employment.

The economic impact of the transition of a person from being unemployed, or unemployed and on welfare, to being employed in the gaming facility, is to have that person realize a net increase in income and purchasing power, as well as shifting the source of all income from tax supported programs to those supported by consumer spending.

Both the Unemployment Compensation program and the Relief to Needy Indian Persons program directly affect Wisconsin taxpayers. The Unemployment Compensation program is supported by payroll taxes on employers. The amount paid by employers is related to how many claims are made against their account with the system. If fewer people make claims, the employer's tax rate is reduced. In the case of the Relief to Needy Indian Persons, this is a state funded program in Wisconsin with some support coming from a negotiated contribution by the Indian tribes (nations) from revenues generated by their tobacco enterprises.

To illustrate, the average Unemployment Compensation benefit in Wisconsin in 1991 was \$176 per week. If a person receiving the average benefit from Unemployment Compensation was employed by the gaming operation at the average income of about \$306 per week, that person would experience an increase in income of \$130 per week. The source of the income would also shift from taxes paid by employers in Wisconsin, to consumer spending on entertainment from throughout Wisconsin, as well as from many other states. Persons at this income level are likely to spend all of their income, and are likely to spend the bulk of it locally.

To continue the examples, the average AFDC recipient received \$575 per month in Wisconsin in 1991. A single mother who had been on AFDC and is employed by the gaming operation at the average wage of about \$1,300 per month would experience an increase of \$725 per month in income, most of which is likely to be spent locally. The state of Wisconsin contributes approximately one-half of the support for the AFDC program with the balance provided by the federal government. As a result, the state's costs for this individual have been reduced by about \$290 per month, and the single mother's income is now totally supported by consumer spending.

The local merchants, landlords, and service providers will benefit from the increased income through increased sales, and the state of Wisconsin, in addition to reduced costs for its programs, will receive added revenues from sales and income taxes paid by gaming employees, as well as by the local business firms, and the employees of those local businesses.

It is significant to note, in the context of these examples, that the seven tribes which identified the residence of their gaming employees have reported that 80 percent of the employees reside in the county where the gaming operation is located, and none were reported as commuting from another state. This indicates that the bulk of gaming income is likely to be spent in the communities near the gaming facility within the state of Wisconsin.

As reflected in Figure 3, over 70 percent of the gaming employees are earning between \$10,000 and \$20,000 per year according to employee surveys and gaming and tribal payroll offices. The average income for all employees in the 9 of 11 communities which provided complete reporting on employee income was just over \$15,000 per year. This figure does not include tips. Tips are common for card dealers, but seldom received by others.

As noted in Figure 4, gaming income represents 100 percent of family income for over two thirds of the employees (69 %), while it is more than 50 percent of family income for another 22 percent. These figures reflect complete reporting by six of the eleven communities. Clearly, gaming income is the most important source of income for most employee families.

GAMING EMPLOYEE INCOME DISTRIBUTION

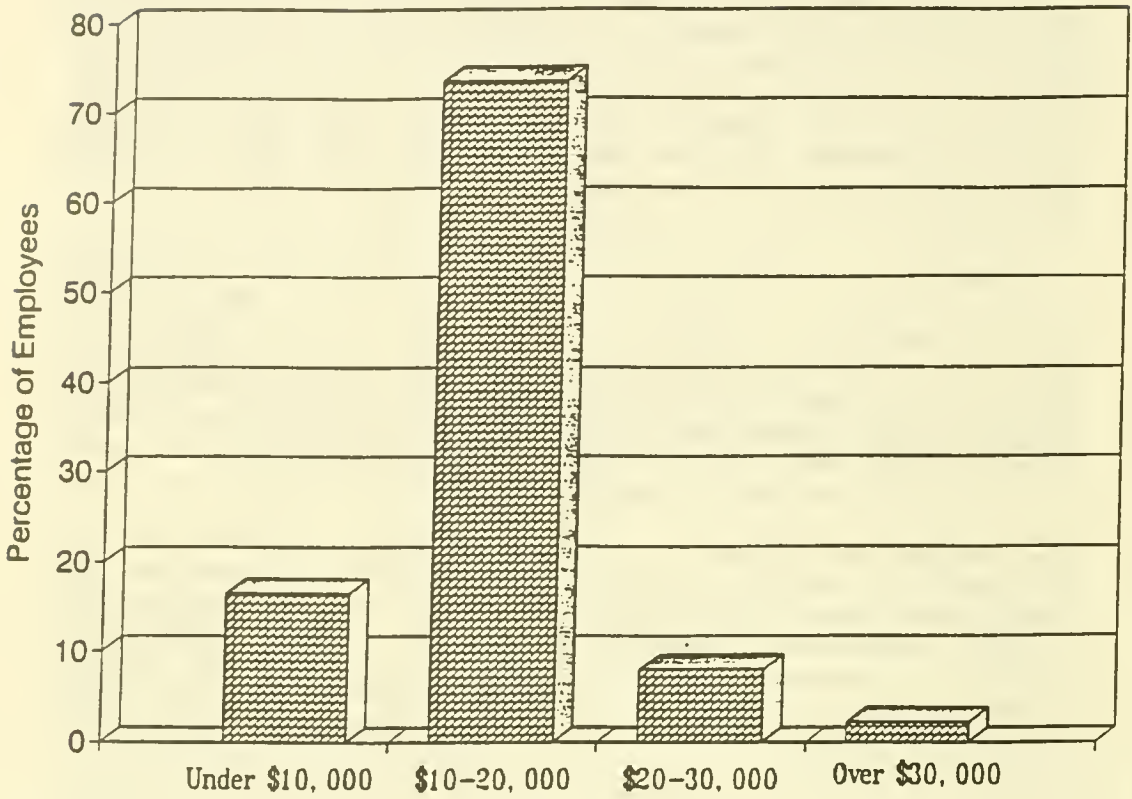


FIGURE 3

GAMING INCOME AS % OF FAMILY INCOME

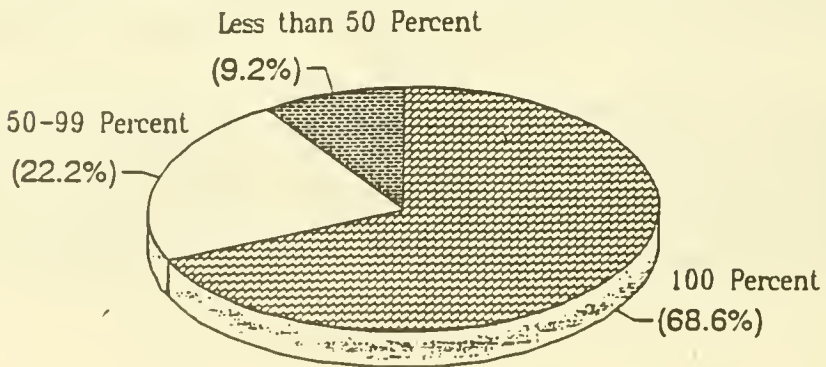


FIGURE 4

Combining all of these income data for the gaming employees, it is possible to observe how many jobs they support by their spending on retail trade and service products.

Table 1

ESTIMATED EXPENDITURES BY EMPLOYEES OF INDIAN GAMING FACILITIES AND THE NUMBER OF JOBS DIRECTLY SUPPORTED IN RETAIL TRADE AND SERVICES

Category of Spending	Wisconsin 1992	Jobs Supported by Direct Spending
Food at Home (Groceries)	\$6,422,592	66
Food Away (Restaurants)	4,045,042	201
Alcoholic Beverages	771,678	31
Housing:		
Shelter	12,377,650	83
Utilities	5,330,908	15
Operations & Supplies	1,950,042	33
Furniture & Equipment	2,354,131	23
Apparel (Clothing)	3,202,878	57
Transportation:		
Vehicle Net Purchase	5,264,830	23
Gas & Oil	2,640,096	21
Maintenance & Repair	1,624,077	31
Finan./Insur./License	2,284,956	23
Health Care	4,453,447	89
Entertainment	2,698,012	51
Personal Care	930,392	37
Reading & Education	1,051,820	23
Tobacco Products	904,418	36
Miscellaneous	1,476,037	30
Cash Contributions	1,577,264	32
Life & Personal Insurance	680,082	7
Pensions & Social Security	3,612,225	
Federal Income Tax	2,135,664	
State Income Tax	384,223	
Other Taxes	212,874	
Total	\$68,385,336	910

Note: State Income Taxes Adjusted to Exclude Indian Employees Living on Trust Land.

Source: Income Distribution and Payroll from Indian Gaming Facilities. Consumer expenditures from Consumer Expenditure Survey, U.S. Dept. of Commerce. Sales employment ratios used to estimate jobs supported, calculated from Census of Business Data.

Gaming Facility Spending

Based upon complete reporting by nine of the fifteen gaming facilities, the estimated purchases of the Indian gaming operations in 1992 was about \$62,000,000. The facilities reported making 62 percent of these purchases from vendors within 20 to 30 miles of the facility (local), another 29 percent from non-local vendors in Wisconsin, and nine percent from vendors in other states. There was a considerable difference in the geographic distribution of the gaming facility spending with those facilities in or near large cities spending larger amounts locally, and those facilities near state borders having larger out-of-state purchases. Also, some purchases of out-of-state supplies are made through area wholesalers, which tends to distort the percentages somewhat.

PURCHASES BY INDIAN GAMING FACILITIES

1992 Estimate \$62,000,000

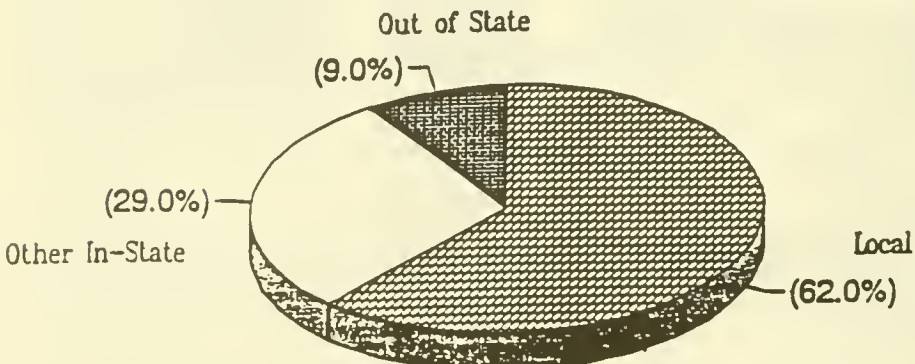


FIGURE 5

Only three of the facilities provided detailed reports of their gaming operation expenses, but these, along with similar data from other states provide the basis for estimates of the distribution of the purchases by category. This estimate, in turn, serves as the basis for estimating the jobs created by these purchases, using sales-employment ratios for the respective activities.

Table 2

ESTIMATED DISTRIBUTION OF WI. INDIAN GAMING FACILITY PURCHASES

	Purchases	Employment Supported
Supplies 20%	\$12,400,000	31
Building and Equip. Maintenance 20%	12,400,000	155
Food and Beverages 15 %	9,300,000	23
Advertising 15 %	9,300,000	98
Insurance 5 %	3,100,000	62
Utilities 3 %	1,860,000	12
All Other 22 %	13,640,000	136
TOTALS	\$62,000,000	517
Wisconsin Totals	\$56,420,000	470

Construction Spending

GAMING RELATED CONSTRUCTION SPENDING

1990 THRU 1992; \$30,702,076

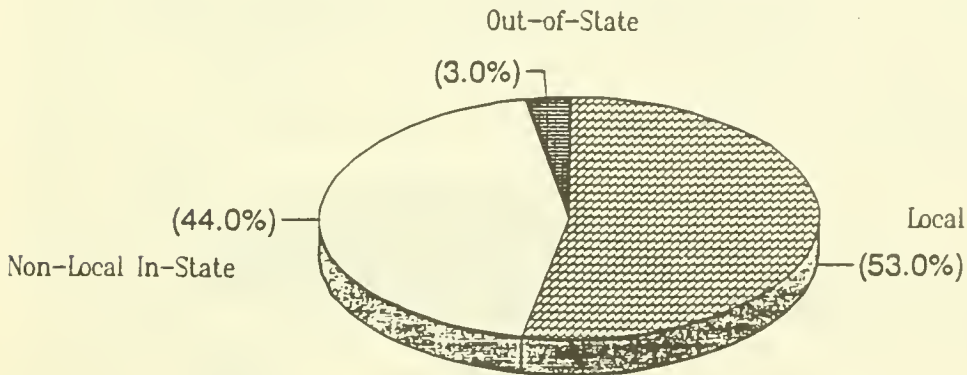


FIGURE 6

Complete and consistent construction data for the past three years were supplied by eight of the fifteen Indian gaming facilities. Only the construction reported by these locations for the past three years are included in Figure 6. Construction, unlike operating expenditures, occurs in uneven increments and cannot be easily estimated in relationship to employment or other variables. The figure of just under \$31 million for the past three years certainly understates the actual spending undertaken by these facilities. Some communities did not include the spending by investors but only that recorded by the tribe. In any event, this level of construction spending has supported a total of about 167 jobs in this industry in this period. Although several of the general contractors on these projects were out-of-state firms, most subcontracted much of the work to local firms and the tribes and gaming operations reported that 97 percent of the work ultimately went to Wisconsin firms.

Impacts on Indian Communities.

DISTRIBUTION OF SPENDING WISCONSIN INDIAN COMMUNITIES

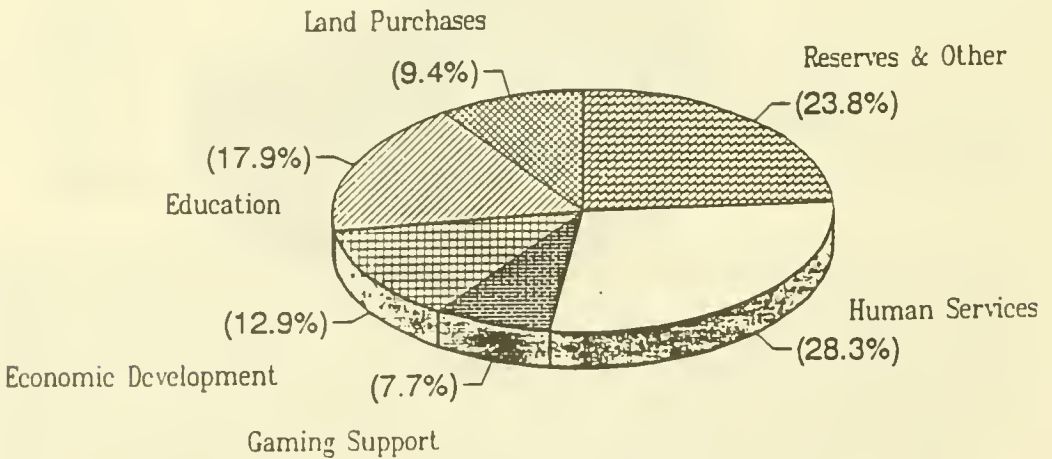


FIGURE 7

The total spending on gaming (drop) at American Indian gaming facilities in Wisconsin in 1992 is estimated to have been about \$690 million. The gross profit (take) of the facilities is estimated at about \$275 million. The net profit to the tribes was about \$135 million. The distribution of the proceeds received by the tribes (nations) is indicated on Figure 7. The percentage identified for gaming support in Figure 7 does not include the management fees for those tribes which contract with investors to operate their facilities. These fees are paid directly by the gaming facility prior to the distributions to the affected tribes.

The number of Indian people living on the reservations in Wisconsin in 1992 was about 15,000 which translates into gaming revenue per reservation resident of \$9,000 per year. There are about 25,000 Indian people living off the reservations in Wisconsin, most of whom are eligible for some of the programs supported by gaming revenues in the Indian communities. These would include higher education grants, elderly and nursing home care, and several others. If the gaming revenues are divided by the entire Wisconsin Indian population, the per capita returns drop to about \$3,400. Many of the off-reservation population would prefer to live on the reservation, but the lack of employment and land and housing sites prevent them from doing so. This is one of the issues being addressed by the tribes with their gaming revenues as reflected in the more than nine percent of gaming proceeds being used for land purchases and the 13 percent dedicated to economic development.

The gaming revenue per capita may seem to be a large amount to some, but it is important to note that this revenue now represents between 40 and 90 percent of the revenues for the Wisconsin Indian community budgets (average = 70%). Federal support for tribes under treaty obligations was cut significantly in the 1980's, as were funds available under competitive grants. The tribal governments (nations) have responsibilities to their population which extend well beyond those of state and local governments in the U.S. This is true, in part because of the unique political status of the tribes as having political sovereignty under the U.S. constitution which parallels that for states, with their status as nations preceding the nationhood of the United States.

It is also the result of the fact that Indian tribes are not only governments but corporations, having been incorporated under the Indian Reorganization Act of 1934.

As units of government the tribes administer programs in education, law and order, planning, land use management, infrastructure development and maintenance, housing, elderly care, and health care. As corporations, tribes assume a significant role in economic development. While there have been continuing efforts to encourage private sector employment in the Indian communities, these have met with limited success and the tribes have typically been the largest employer in these locations.

A significant contributor to the high cost of government in the Indian communities has been the poverty of the population. Those state and local governments in the U.S. with higher percentages of their population in poverty have the same problem. Most communities would find it devastating to have as many as one-fourth to one-third of their citizens in a poverty status. In the case of the Indian communities, it has been typical to have a majority of the population officially poor by national standards.

The large percentage of the gaming revenues which are in the Reserves and Others category in Figure 7, reflects the fact that the Indian communities are not acting hastily in spending their gaming revenues but are, rather, deliberating with respect to how to best use these funds to diversify their economies and insure their opportunities for self-determination in the future.

The American Indian tribes (nations) in Wisconsin employed about 2,000 persons in addition to the gaming employment in 1992. With 70 percent of tribal budgets being supported by gaming revenues, 1,400 of these jobs can be identified as directly supported by the gaming enterprises.

Visitor Spending

The American Indian gaming facilities serve as major tourist attractions for the communities in which they are located. In addition to their spending on gaming, the customers spend significant amounts outside the casinos. This has been documented by customer surveys conducted at the gaming facilities with complete reporting from seven of the 15 facilities supplemented by the results of surveys conducted by University Extension and University of Wisconsin-Superior faculty at two more of the facilities. The results are summarized on Figure 8. Local gaming customers who represent 30 percent of the total, are excluded from the visitor spending category.

It appeared that the vast majority of non-local visitors surveyed had gaming as the major purpose for their trip. However, the surveys did not ask specifically whether or not gaming was the main or only purpose of their trip. Some of the impact of visitor spending, therefore, might properly be shared with other sectors of the local economy.

NON-GAMING VISITOR SPENDING

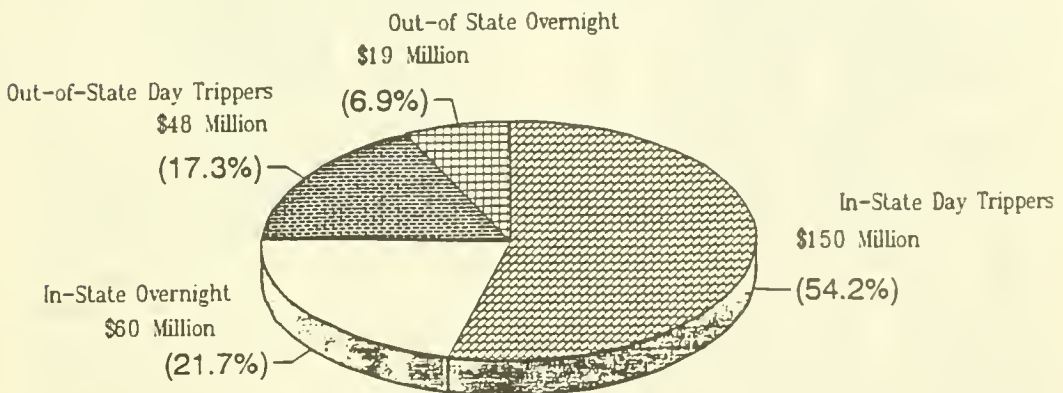


FIGURE 8

The surveys support the observations of tourism and recreation researchers and visitor and convention surveys conducted elsewhere in Wisconsin, namely, that overnight visitors spend much higher amounts per visit than do "day trippers." The spending breakdowns are estimated to be as follows:

Table 3

ESTIMATED NON-GAMING SPENDING BY NON-LOCAL GAMING CUSTOMERS		
	(Dollars per day per person)	
	Day-Trippers	Overnight Visitors
Food and Drink	15	50
Transportation	15	15
Lodging		30
Other (largely shopping)	<u>5</u>	<u>30</u>
	\$35	\$125

Using sales per employee data, it is then possible to estimate the number of jobs in the vicinity of the gaming facilities which are supported by non-local visitor spending.

Table 4

ESTIMATED NUMBER OF JOBS SUPPORTED BY NON-LOCAL VISITOR SPENDING

	Day Trippers		Overnighters		Total Jobs
	In-State	Out-of-State	In-State	Out-of-State	
Food & Drink	2022	686	800	253	3,761
Transportation	413	143	48	15	619
Lodging			480	152	632
Other (Shop.)	268	86	180	57	591
					<u>5,603</u>

Added secondary data are available to support the impact that gaming activity is having on eating and drinking establishment sales and all non-gaming retail sales in the vicinity of the gaming facilities. Unfortunately, the latest data available at this time only include the years through 1991. Nevertheless, the impact on those counties which had gaming facilities by that time are evident. In assessing these impacts, it is appropriate to use the sales per capita to adjust for differences in sales related to local populations. As noted in Figure 9, eating and drinking sales per capita from 1988 to 1991

in those counties with casinos established in that period, increased from \$487 to \$716, an increase of 47 percent, while the per capita sales in non-casino counties grew from \$525 to \$671, an increase of 28 percent in the same period. (Figure 9)

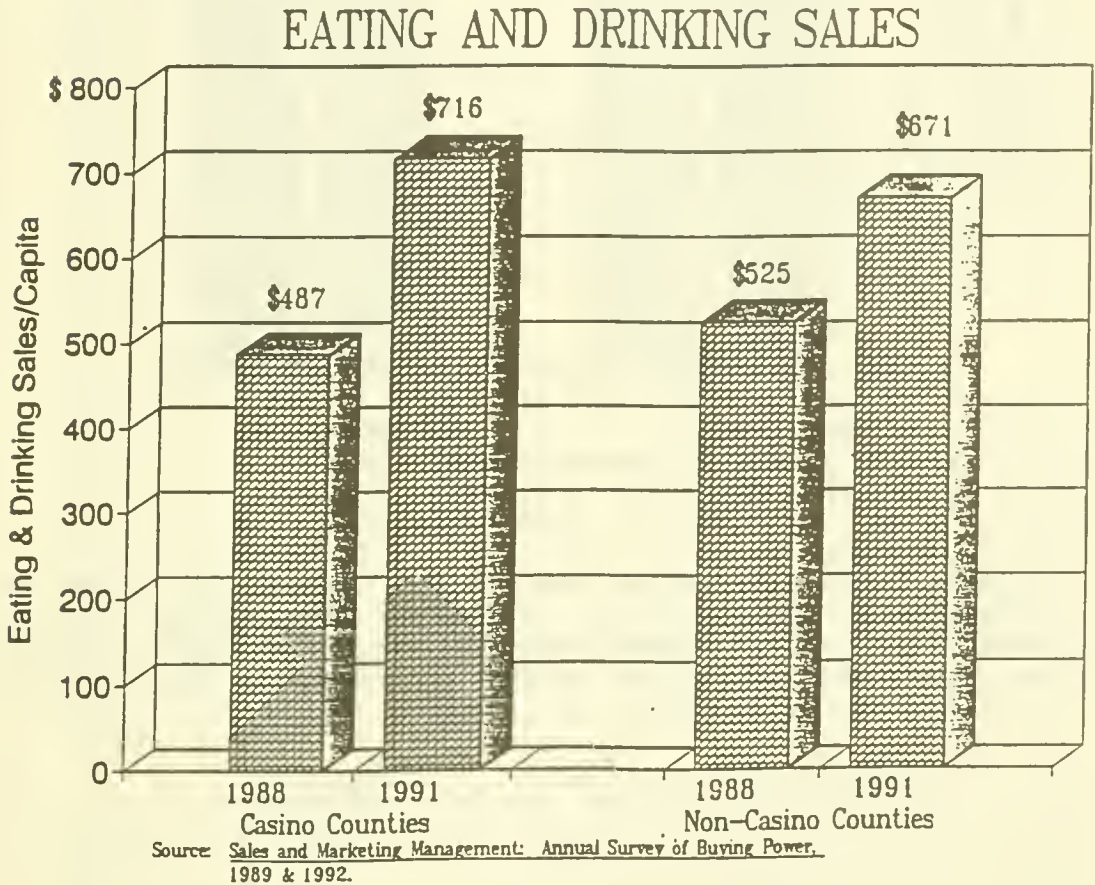


FIGURE 9

Furthermore, total retail sales in the casino counties increased from \$5,957 per capita in 1988 to \$7,374 in 1991, an increase of 24 percent, while they increased in non-casino counties from \$6,547 to \$7,004, an increase of only seven percent. (Figure 10)

TOTAL RETAIL SALES PER CAPITA

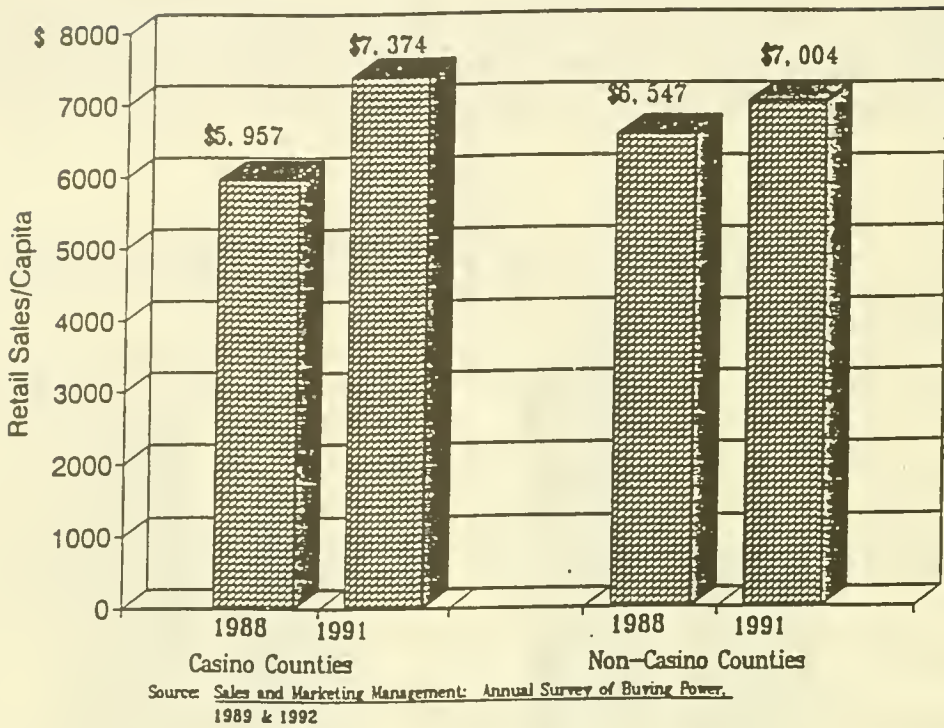


FIGURE 10

Before proceeding to summarize the direct and indirect employment impacts of the gaming facilities, it is important to note the geographic origin of the customers as revealed by customer surveys conducted in 12 of the 15 facilities. (Figure 11)

ORIGIN OF GAMING CUSTOMERS

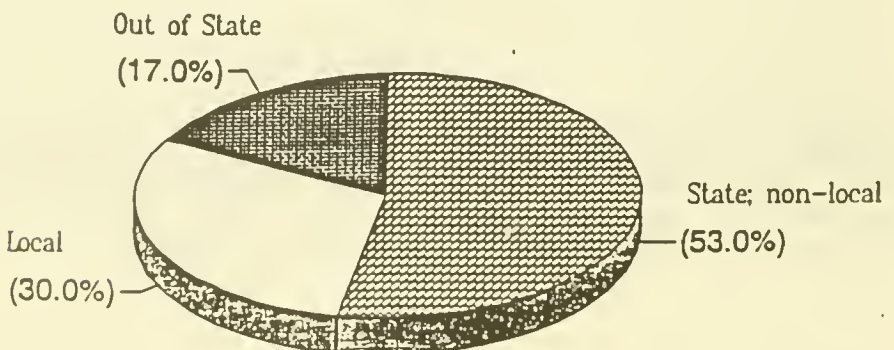


FIGURE 11

Indirect Impacts:

When new jobs, earnings, and sales are generated in an economy, the effect does not stop with the direct employment and income. As noted above, for example, the 4,500 new jobs in gaming in Wisconsin in recent years have provided the support for over 900 jobs as the gaming employees spend their income on goods and services, largely in Wisconsin. The 910 retail trade and service employees in Wisconsin who are supported by the gaming employees then spend their income on other goods and services, again largely in Wisconsin, thus generating another round of sales and jobs. This process repeats itself as the income is recirculated within the state. As the income is respent, some escapes to other states as some state residents spend elsewhere, purchases are made from other areas by suppliers, and taxes are paid to the federal government, etc. Models have been developed to trace this total indirect impact of any activity in a specific economy.

When measuring the impact on an economy, it is significant to note the origin of the source of support for the new employment. To the extent that the support for a new activity comes from the local population, the impact is largely to retain local income which might have been lost to other communities had the facility not been established locally. This is viewed as increasing the times income is recirculated within the local economy before it escapes to other locations. If, on the other hand, the support for the new jobs is coming from outside the local economy, it represents an injection of new income rather than simply enhancing the recirculation of local income.

From the standpoint of the local economies where the gaming facilities are located, seventy percent of the income is viewed as non-local, adding new income to the local economy in much the same way as any tourism activity. From the standpoint of the entire state, however, only the seventeen percent which originates outside of the state can be viewed as actually representing a new injection of outside income into the state's economy. The balance represents the retention of income within the state, most of which would be lost to surrounding states in the absence of state based gaming

facilities, which enhances the recirculation of income within the state.

In assessing the indirect impacts of the Indian gaming activity on the economy of Wisconsin, the model which has been chosen is that recently published by the U.S. Department of Commerce, Bureau of Economic Analysis, which incorporates the latest available data. The details of the calculations are reflected in Appendix A of this report.

Based upon the method used to estimate the ultimate impact of the addition of American Indian gaming facilities to the economy of Wisconsin, the results are as follows:

Table 5

DIRECT AND INDIRECT IMPACTS ON OUTPUT, EARNINGS &
EMPLOYMENT OF AMERICAN INDIAN GAMING FACILITIES;
WISCONSIN 1992

	Added Output \$(millions)	Added Earnings (\$millions)	Added Employment

Direct:			
Gaming Employment			4,500
Gaming Employee Earnings		\$68	
Gaming Gross Profits	\$275		
Construction Employment (1 Yr.)			56
Construction Employee Earn		2	
Construction Spending (1 Yr.)	10		
Visitor Support Employees			5,603
Visitor Support Employees Earn.		84	
Visitor Spending (Non-gaming)	277		
Total Direct:	<u>\$562</u>	<u>\$154</u>	<u>10,239</u>
Indirect:			
Recirculation of Direct Income (Multiplier Effect)	\$1,027	\$346	22,863
Total Gaming Impact:	\$1,589	\$499	33,102
Amount of Impact Supported by Out-of-State Sources:	\$270	\$85	5,627

In the application of this method, the transfer of net profits to the tribes (nations) is treated as a purchase by the gaming facility from a supplier. The tribes are classified as membership organizations in the industrial classification system for this purpose. The transfer to the tribe is a major source of added employment and income not only because of the direct employment by the tribes, but because they are very labor intensive entities and generate many jobs for relatively low income persons who tend to spend most of their income locally.

In summary, then, the American Indian gaming facilities are estimated to have supported a total of 33,102 jobs in Wisconsin in direct and indirect employment, supported about \$1.6 billion in added output (sales), and supported \$499 million in earnings for persons employed in Wisconsin, in 1992.

APPENDIX A:

Direct and Indirect Impacts
of American Indian Gaming Facilities
on Economy of Wisconsin

Gaming Related Industry	Change in Final Demand (\$ Millions)	Multipliers			Impacts		
		Output	Earnings	Employment	Output (\$ Millions)	Earnings (\$ Millions)	Employment (No. of jobs)
Supplies (Wholesale)	12.4	1.815	0.6601	29.1	22.5	8.2	361
Repair & Maintenance Construction	12.4	2.1687	0.7905	36.1	26.9	9.8	448
Food and Beverages	9.3	1.815	0.6601	29.1	16.9	6.1	271
Advertising	9.3	2.007	0.851	43.9	18.7	7.9	408
Insurance	3.1	2.4048	0.8599	40.7	7.5	2.7	126
Utilities	1.9	1.4646	0.2009	8	2.7	0.4	15
Non-Durab. Mnf. (Print)	2.5	2.1429	0.6265	30.7	5.4	1.6	77
Transportation	5	2.0178	0.7746	36.8	10.1	3.9	184
Business Services	6.2	2.007	0.851	43.9	12.4	5.3	272
Membership Organizations	135	2.1486	0.7125	46.4	290.1	96.2	6264
New Construction Spending	10	2.2157	0.6992	33.9	22.2	7	339
Visitor Non-Gaming Spending							
Eating and Drinking Places	116.7	2.309	0.64	59.7	269.5	74.7	6967
Transportation	94.62	2.0178	0.7746	36.8	190.9	73.3	3482

Visitor Non-Gaming Spending	Change In	Multipliers			Impacts			
		Final Demand (\$ Million)	Output	Earnings	Employment	Output (\$ millions)	Earnings (\$ millions)	Employment (No. of jobs)
Lodging	18.96		1.9321	0.6095	55.1	36.6	11.6	1045
Other (Retail)	46.68		2.0376	0.796	55.8	95.1	37.2	2605
Subtotal	\$484					\$1027.4	\$345.7	22863
Plus: Direct Impact						\$562	\$154	10239
Total Gaming Impact						\$1589.4	\$499.7	33102

Source: Multipliers from U. S. Department of Commerce, Bureau of Economic Analysis. Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), Second edition. Washington, D. C.: U. S. Govt. Printing Office, May 1992, p. 52.

Mr. RICHARDSON. Chairman Ellis.

STATEMENT OF MYRON ELLIS

Mr. ELLIS. Mr. Chairman, my name is Myron Ellis. I am the chairman of the Minnesota Gaming Association and I am representing all 11 tribes in the State of Minnesota. I would like to express my appreciation on behalf of the 11 tribes in Minnesota.

For the past two years, Indian tribes involved in Indian gaming have weathered the storm of unfounded, unproven charges and criticisms of their gaming activities based upon infiltration of organized crime, attraction of petty crime, prostitution, and drug abuse and takeover of tribal games by shady outside interests. While we ourselves continue to have concerns about these issues and have taken steps to prevent them, those allegations have largely been proven to be false. In fact, they often were a screen for non-Indian opposition to our games based upon pure economics.

I do not want to use my limited time to go over those charges. Instead, I would like to use my time to provide this committee with the very positive impact of Indian gaming activities.

Mr. Chairman, when Congress enacted the Indian Gaming Regulatory Act, it clearly recognized that gaming enterprises were a legitimate source of tribal revenues. Section 3 of IGRA, stated earlier, is to provide a statutory basis for operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments. I believe that Indian tribes across the country have vigorously pursued that goal. I know that the tribes in Minnesota have.

Last September, the Minnesota Indian Gaming Association has again commissioned the accounting firm of K.P.M.C. Peat-Marwick to complete a study of the casinos in Minnesota for 1992. Copies have been provided to the committee. Last year, this study was completed for 6 of the 11 tribes in Minnesota and this year all 11 tribes have been included.

I am pleased to report today that we now have more current information. Tribal gaming now accounts for 9,975 direct jobs in Minnesota, 76 percent of them in rural counties of our State. Our casinos are responsible for a total of nearly 20,000 direct and indirect jobs in Minnesota. If Minnesota's tribal casinos were considered a single corporation for ranking purposes, we would be Minnesota's seventh largest employer.

More significant is the effect these jobs have had on rural Minnesota. In rural counties where gaming exists, there have been a decrease in FTC cases of 14 percent since 1987. By way of contrast, AFDC caseloads in Hennepin County have increased 29 percent, while caseloads in Ramsey County have increased by 45 percent during the same period.

There is no doubt about it, Indian gaming is the most successful rural economic development tool in Minnesota history for tribal governments and this has been done without funding from any federal or state agency.

But Indian people have a long way to go. There was an article in the *St. Paul Pioneer Press* of February 8, 1993, that looked at poverty in Minnesota. According to 1990 U.S. Census data, the poverty rate among Indians in Minnesota was 43.7 percent compared

to 8.7 percent for white Minnesotans. The Census Bureau told us that American Indians are worse off than any other community in the U.S. and that Indians in Minnesota are worse off than those in the rest of the Nation.

In the past few months you may have heard a lot about the level playing field. The next time you hear that phrase remember the figures I just presented to you and ask yourself where was that level playing field before? Even with jobs and economic growth created by tribal gaming, it will be many years before these economic opportunities can begin to affect the cumulative effects of 200 years of poverty, despair and dependence.

The record is clear. Tribal gaming is a plus for the people of Minnesota. As you may know, we in Minnesota are in a constant battle within the State with private bar owners, resorters, the hospitality industry that casinos are hurting their businesses. Information provided by the Minnesota Department of Jobs and Training proves that employment has continued to grow over the past two years in this industry. If individual business owners are having problems, other factors should be looked at such as changing social habits, tougher drunk driving laws in our State, and a recession that is just beginning to ease.

Tribal gaming programs are operated for the benefit of entire communities and as a sovereign government like the State of Minnesota we generate these revenues in order to pay for the programs and services which are needed on our reservations.

Like I stated earlier, we are making use of our gaming revenues exactly the way Congress intended when it passed the Indian Gaming Regulatory Act.

Mr. Chairman and members of the committee, Indian people in Minnesota are proud to be taking our rightful place as productive, contributing members of this society. We are moving out of the shadow of poverty and despair into the mainstream of our State's economy. And we are still able to maintain our cultural life.

We are working hard, paying taxes, caring for our children, providing health care for our communities, repairing streets, cleaning our waters, and rebuilding our families. We were Minnesota's first citizens after all, so we have a special sense of pride in our identity as residents of Minnesota. For that reason, it is particularly satisfying to be able to say that tribal gaming, which has given new life to our people, is also giving new life to the non-Indian people of rural Minnesota.

I appreciate the opportunity to appear before you today.

[Prepared statement of Mr. Ellis and attachments follow:]

STATEMENT OF MYRON ELLIS, CHAIRMAN
MINNESOTA INDIAN GAMING ASSOCIATION
BEFORE THE
HOUSE SUBCOMMITTEE ON NATIVE AMERICANS

APRIL 2, 1993

Mr. Chairman, my name is Myron Ellis. I am Chairman of the Minnesota Indian Gaming Association and a member of the Leech Lake Tribal Council. MIGA represents 11 Indian tribes of Minnesota on matters and issues directly or indirectly affecting their gaming enterprises and activities. On behalf of the MIGA tribes, I would like to express my appreciation for the opportunity to testify on Indian gaming issues and the Indian Gaming Regulatory Act.

For the past two years, Indian tribes involved in Indian gaming have weathered the storm of unfounded, unproven charges and criticisms of their gaming activities based upon infiltration of organized crime; attraction of petty crime, prostitution, and drug abuse; and take-over of tribal games by shady outside interests. While we ourselves continue to have concerns about these issues and have taken concerted steps to prevent them, those allegations have largely been proven to be false. In fact, they often were a screen for non-Indian opposition to our games based upon pure economics.

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Even more significant is the effect these jobs have had on rural Minnesota. In rural counties where gaming exists, there has been a decrease in AFDC case loads of 14% since 1987. By way of contrasts, AFDC caseloads in Hennepin County have increased 29%,

while caseloads in Ramsey County have increased by 45% during the same period. There is no doubt about it, Indian gaming is the most successful rural economic development tool in Minnesota history for tribal governments..and this has been done without funding from any federal or state agency!

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In the past few months, you may have heard alot of talk about the "Level playing field" the next time you hear that phrase, remember the figures I just presented to you and ask yourself, "Where is this level playing field?" Even with jobs and economic growth created by tribal gaming, it will be many years before these economic opportunities can began to affect the cumulative effects of two hundred years of poverty, despair and dependence.

The record is clear..Tribal gaming is a plus for the people of Minnesota. As you may know we in Minnesota are in a constant battle within the state with the private bar owners, resorters and hospitality industry that casinos are hurting their businesses. Information provided by the Minnesota Department of Jobs and Training proves that employment has continued to grow over the past

two years. If individual business owners are having problems, other factors are far more likely to blame--factors such as changing social habits, tougher drunk driving laws in our state, recession that is just beginning to ease.

Tribal gaming programs are operated for the benefit of entire communities and as sovereign government like the State of Minnesota we generate these revenues in order to pay for the programs and services which are needed on our reservations. Like I stated earlier we are making use of our gaming revenues exactly the way Congress intended when it passed the Indian Gaming Regulatory Act - "to create jobs, stimulate economic development, build economic self-sufficiency and strengthen tribal governments."

Mr. Chairman, Members of the Committee -- Indian people in Minnesota are proud to be taking our rightful place productive contributing members of this society. We are moving out of the shadow of poverty and despair into the mainstream of our state's economy and still able to maintain our cultural life. We are working hard, paying taxes, caring for children, providing health care for our communities, repairing streets, cleaning our water, and rebuilding our families. We were Minnesotas first citizens, after all -- and so we have a special sense of pride in our identity as residents of Minnesota. For that reason, it is particularly satisfying to be able to say that tribal gaming, which has given new life to our people, is also giving new life to the non-Indian people of rural Minnesota.

Again, I appreciate the opportunity to appear before you today, and thank you and your committee for your attention.



TRIBAL GAMING IN MINNESOTA Some Facts You Should Know

1. Tribal gaming was authorized by Congress via the Indian Gaming Regulatory Act (IGRA) to achieve specific public policy objectives, including:

- To create jobs and stimulate economic development on Indian reservations;
- To strengthen tribal governments and promote self-sufficiency.

Federal law requires that:

- Gaming operations must be owned by tribal governments, and that tribal governments must be the primary beneficiaries of gaming programs;
- Tribes and states must enter into an agreement (compact) for the conduct of Class III gaming on reservations;
- Tribal gaming programs must operate under ordinances approved by the U.S. Department of Interior, and under the terms of the tribal-state compacts.

2. Tribal gaming is the most successful rural economic development tool in Minnesota history.

- 9,975 Minnesotans were directly employed in tribal gaming programs in 1992, 76% of them in rural Minnesota counties.

- Indirect employment attributable to tribal gaming totals more than 20,000.
 - AFDC recipient counts in rural Minnesota counties with tribal casinos have decreased by 14%, while AFDC counts in Minnesota generally have increased by 17%.
3. Tribal gaming is lifting Indians out of poverty and replacing despair with hope and opportunity.
- 1990 census data show Indians worse off than any other minority in the U.S., and show Minnesota Indians worse off than the nation's average for Indians.
 - The effects of two hundred years of poverty, despair and dependence will take time to correct.
 - Indian citizens are sharing the benefits of tribal gaming with their neighbors both inside and outside the reservation.
 - Only through continued development of tribal gaming can Indian people hope to become full-fledged partners in Minnesota community life.
4. Tribal gaming generates tax revenues and tax savings for all Minnesota taxpayers.
- It would have cost Minnesota taxpayers \$100,000,000 in public spending to replicate the jobs created since 1987 in tribal gaming, based on typical federal/state costs of \$10,000 per job.
 - Tribal casinos generated more than \$36,000,000 in federal and state tax revenues in 1992 based on annual payrolls of \$116,000,000.

- Reduced AFDC costs in rural counties where gaming occurs help to offset huge AFDC increases in Hennepin (+29%) and Ramsey (+45%) Counties since 1987.
5. Minnesota Indians pay virtually all the same taxes everyone else pays.
- Indians pay all federal income taxes, excise taxes and state sales taxes. In many cases, state sales taxes are rebated to tribal governments under agreements between the state and the tribe.
 - Most Indians pay state income taxes, except for a small minority who live and work on the reservation.
 - Most Indians pay real estate taxes, except for a small minority who live on federal trust lands.
6. Minnesota's tribal governments have gone on record in support of a moratorium on new forms of gambling in Minnesota.
- Tribal-state compacts in Minnesota include a commitment to avoid expansion into new forms of gambling.
 - Current or pending casino construction projects do not represent expansion of gaming, but merely enhancement or renovation of physical facilities to accommodate existing gaming programs; no new forms of gambling will be offered.
7. Tribal casinos are helping, not hurting, Minnesota's hospitality industry.
- Minnesota Jobs and Training figures show that employment in the hospitality industry is up, not down, since tribal gaming began.

- Tribal casinos generate more business for Minnesota's hospitality industry by attracting out-of-state visitors, and by keeping Minnesota gambling dollars in the state instead of exporting them to Nevada.
- The majority of Minnesota tribal casinos do not serve alcohol, so cannot be considered directly competitive with bars and restaurants serving liquor.
- Bars with decreased business are reflecting changes in social habits, i.e., tougher enforcement of drunk driving laws, decreased liquor use and increased health awareness.

8. The proposed video lottery bill is bad public policy.

- As a matter of policy, Minnesota has authorized gaming not for private profit but for a greater social good.
- Video lottery will not create jobs, stimulate rural economic development or benefit the citizens of the state.
- Most Minnesotans believe we have enough gambling already.

Economic Benefits of Tribal Gaming in Minnesota

1992 Study Highlights

February 1993

Issued by:
Minnesota Indian Gaming Association

Quality Service

 Peat Marwick

1992 MIGA Study Highlights

■ Employment

- There were 9,975 direct employment jobs at Tribal gaming facilities as of September 1992.
- Wages range from \$7 to \$12 per hour.
- Total direct and indirect employment (including tourism, hospitality, marketing, advertising, retail, construction, etc.) is approaching 20,000 jobs.
- Non-Indians benefit from 73% of the direct employment jobs and most of the indirect jobs.
- Non-urban areas of the state benefit from 76% of the direct employment jobs.
- The 9,975 jobs in Tribal gaming in Minnesota ranks in the top 10 when compared to the largest corporate employers.
- Federal and state job creation often require in excess of \$10,000 of direct investment to create a single job. Tribal gaming jobs did not require any federal or state government investment. It would require approximately \$100 million of public spending to replicate the job creation results of Tribal gaming.

1992 MIGA Study Highlights

■ Payroll and Related Taxes

- Direct payroll in 1992 exceeded \$116 million.
- Direct payroll-related taxes exceeded \$36 million.

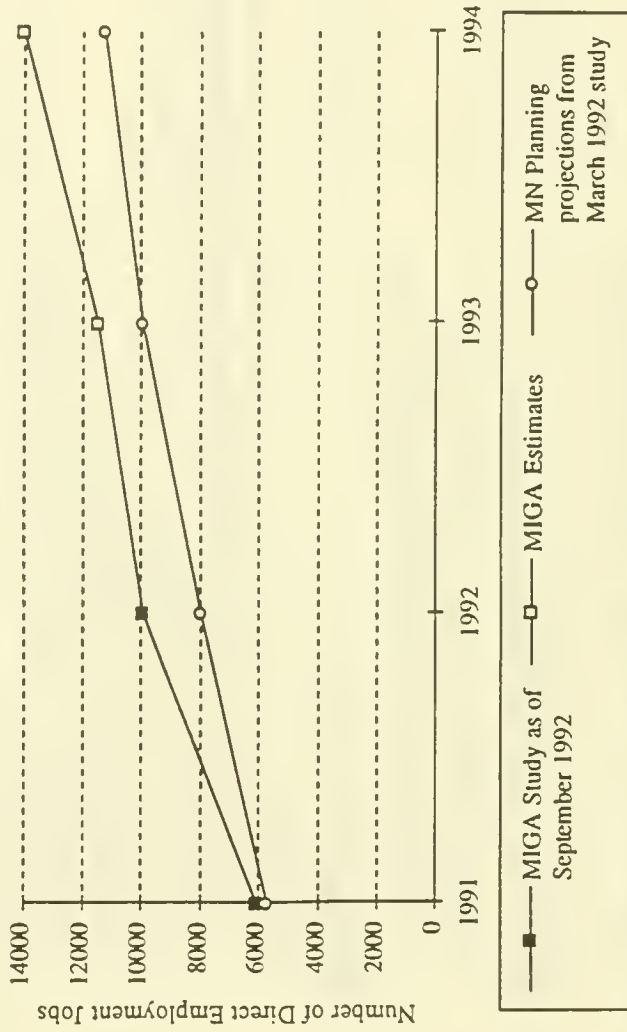
■ Human Services

- The impact on human service programs from Tribal gaming employment continues to be favorable as measured by trends in AFDC spending in counties with Tribal gaming.
- Since 1987, AFDC recipient counts in Ramsey County have increased 45% and counts in Hennepin County have increased 29%. Counts for the entire state have increased 17%.
- Since 1987, AFDC recipient counts in the 8 non-urban counties that directly benefit from Tribal gaming jobs have decreased 14%.

3

Tribal Gaming in Minnesota

Employment Growth



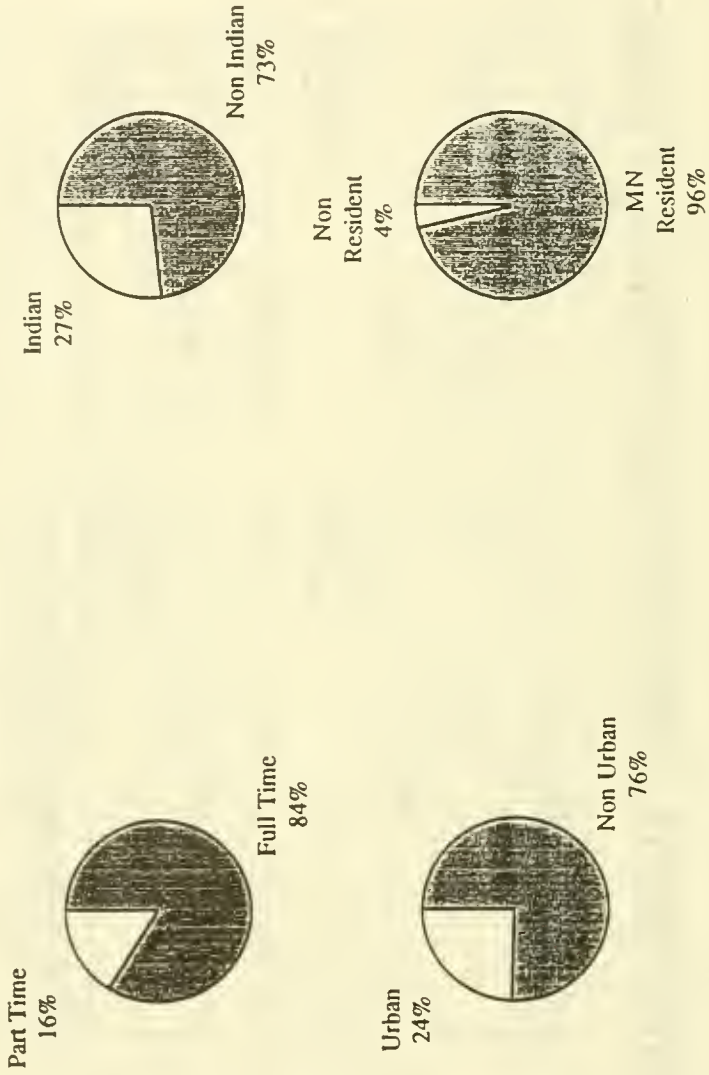
Employment, Payroll and Payroll Taxes

Employment Summary				
Indian	2,699	Full Time	8,400	
Non-Indian	7,276	Part Time	1,575	
	9,975			9,975
Urban	2,442	MN Resident	9,646	
Non-urban	7,533	Non-resident	329	
	9,975			9,975
Payroll and Payroll Taxes Summary				
Payroll	Federal Taxes	State Taxes	Net Payroll	
\$116,950,000	\$30,400,000	\$6,260,000	\$80,290,000	

Source: MIGA Study as of September 1992

Quality Service

Employment Comparisons



Source: MIGA Study as of September 1992

Employment
Comparison
to Minnesota's
25 Largest
Corporate
Employers

Source: Minnesota Department of Trade and
Economic Development Report of
Minnesota's Largest Corporate
Employers, September 10, 1991

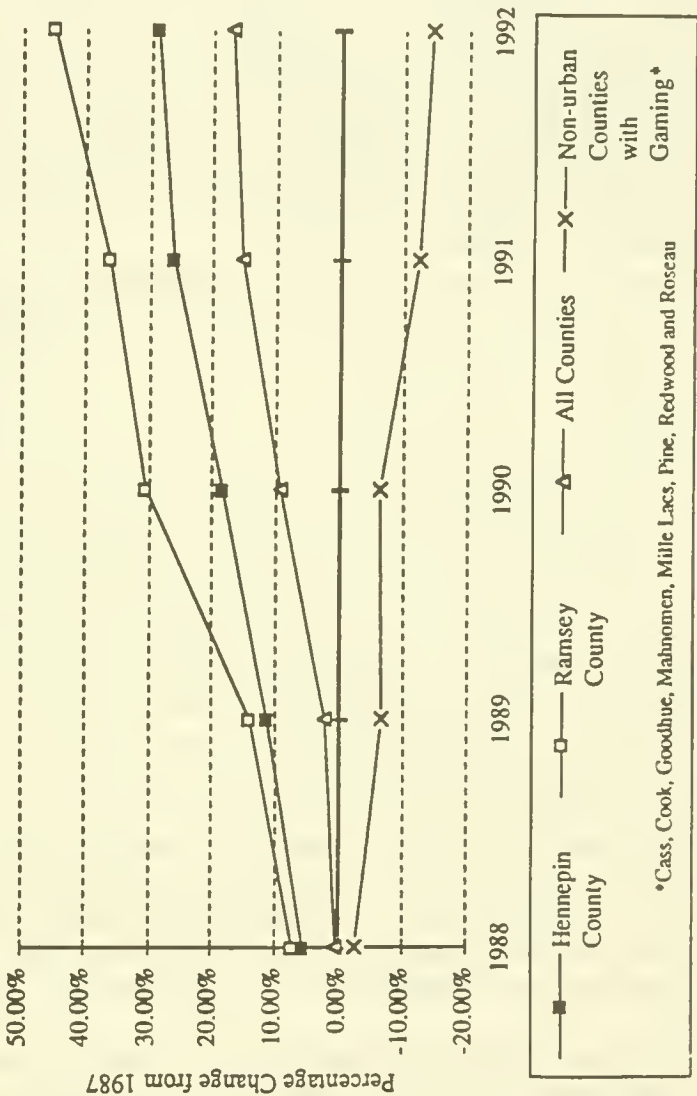
Rank	Company Name	Minnesota Employment
1	3M	23,000
2	Dayton Hudson Corporation	21,850
3	Northwest Airlines Inc.	17,500
4	Mayo Foundation	16,500
6	Health One Corp.	11,000
8	Honeywell Inc.	11,000
O	Tribal Gaming 1992	9,975
7	IBM Corporation	9,300
8	Lifespan Inc.	8,800
9	Norwest Corporation	8,151
10	Unisys Corporation	8,000
11	U.S. West	7,316
12	Fairview Hospital & Health Services	7,000
13	Northern States Power Company	7,000
14	First Bank System Inc.	6,426
15	Fingerhut Corporation	5,800
18	K mart Corporation	5,700
17	Health East Corp.	5,050
18	Control Data Corporation	4,884
19	J.C. Penney Company Inc.	4,800
O	Tribal Gaming 1991	5,747
20	Burlington Northern Railroad Inc.	4,500
21	United Parcel Service	4,200
22	The Prudential	4,100
23	Sears Roebuck and Company	4,033
24	Gateway/Rainbow Foods Inc.	4,000
25	Andersen Corporation	3,960

Human Services Spending –
AFDC Recipients

	1987	1991	% Increase (Decrease) from 1987	1992	% Increase (Decrease) from 1987
Hennepin	42,349	53,524	26%	54,665	29%
Ramsey	24,298	33,169	36%	35,280	45%
State of MN	156,932	181,021	15%	183,676	17%
8 non-urban counties with gaming*	6,002	5,255	-12%	5,137	-14%

*Cass, Cook, Goodhue, Mahanomen, Mille Lacs, Pine, Redwood and Roseau

Human Services – Changes in AFDC Recipient Counts



Source: Recipient count data from Minnesota Department of Human Services

Mr. RICHARDSON. Chairman Keechi, welcome to the subcommittee.

STATEMENT OF CHARLES KEECHI

Mr. KEECHI. Thank you, Mr. Chairman.

I am Charles Keechi, chairman of the National Gaming Association and Chief of Delaware Nation in Oklahoma. I have 12 pages of testimony I was going to read. I have submitted a comprehensive report to you and I will let that stand. So I am going to dispense with the 12 pages and since I am dealing with five minutes at \$200 a minute here I will try to make the best use of it.

I want to talk about three points, yesterday, today and tomorrow. Yesterday the American Indian was a proud group of people. When we welcomed those first Europeans to these shores, we shared our lives. We took a gamble and we lost.

Many times I have been to Washington here going through these halls of the citadel of power, and I look at the pictures on the wall all over. Where are the Indians? We see all the statues throughout the Washington area. Where is the American Indian? These United States would not be here today if it were not for the sacrifices of the Indian tribes who have given up through treaty, through forced movement, all of these lands, and in these treaties, your forefathers promised the American Indian would be taken care of.

As so eloquently spoken earlier, those treaties have been broken. We can deal with laws. The United States is a Nation of rules, regulations, laws, things that my people do not understand. My people only understand having enough food on their table.

On Tuesday, I buried my vice president, even though I was not there. You have to understand that the American Indian is suffering because of lack of revenues. We are not able to provide health care. So our people, like your people out there in the ghettos and the urban areas, we are all suffering regardless of race, color or creed. And I think it is the responsibility of the United States Congress to look after not only the American Indian but all of the citizens of these United States. If the Congress fails, then they have failed the American Constitution of the people, by the people, for the people.

I as an elected official of the Delaware Nation have a responsibility to my people and I feel so useless and helpless at times because I cannot provide adequate revenues for the tribe. You have heard time and again, and I am not going to bore you, about how great Indian gaming is. I don't look at Indian games as Indian gaming; I look at it as Indian survival. I don't think the United States Government nor the people, the taxpayer's, can afford a continued burden.

We the American Indian choose not to be a burden. We wish only to pull ourselves up by our bootstraps, and we are doing that where Indian gaming is concerned. I think that if allowed to continue, and it will depend upon the Congress—it is not going to end with the governors or with the tribal leaders—it is going to end with the government. What I do ask is that when you make your decisions and when those votes are taken, I think it is a moral responsibility that you have to see that those decisions that are made are made

with compassion, not as one non-Indian to an Indian, but one fellow human to another.

The pain and the suffering has been here, is here and will continue. All we ask as the American Indian is that we be allowed to provide for our people.

The reservations that we were moved upon are like human kennels, and I strongly urge every Member of Congress not just to go back to your own States and your own constituents but go out to other States, go out to the reservations and see the poverty that exists, see the people who have lost limbs due to diabetes. Look at our cemeteries, because no longer are we a proud people. We are a desperate people, and I ask you and urge you to consider that. We are all one citizen of these United States and we the American Indian have always been supportive. We have always given, will continue to give, and we ask now only for your understanding and your compassion. Thank you.

[Prepared statement of Mr. Keechi follows:]

TESTIMONY OF CHAIRMAN CHARLES KEECHI
on behalf of the
NATIONAL INDIAN GAMING ASSOCIATION
presented to the
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
of the
HOUSE COMMITTEE ON NATURAL RESOURCES

April 2, 1993

TESTIMONY OF CHAIRMAN CHARLES KEECHI
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April 2, 1993

Mr. Chairman and members of the committee, I am Charles Keechi, Chief of the Delaware Nation in Oklahoma, Executive Board Member of the Oklahoma Indian Gaming Association and Chairman of the National Indian Gaming Association. Thank you for giving the American Indian community the opportunity to identify and clarify our concerns to you. Certainly, the issues before us are difficult and complex, but they are of utmost importance to those Indian tribes who have been frustrated and denied the opportunity to improve and augment the quality of life for their members. I congratulate you, Mr. Chairman, for calling this hearing to discuss the critical issues facing Indian gaming.

The National Indian Gaming Association is a national association for American Indian tribes operating Indian gaming or seeking to develop Indian gaming on their land. The National Indian Gaming Association represents 70 of the nation's approximately 150 Indian gaming tribes.¹ The National Indian Gaming Association is an outgrowth of the Bureau of Indian Affairs effort of the 98th Congress to consult with tribes in order to develop their own position on Indian gaming. The membership is geographically diverse and represents different size tribes which have different types of gaming operations. The National Indian Gaming Association's mission is to protect and preserve the general welfare of tribes striving for economic self-sufficiency through gaming enterprises in Indian country.

Mr. Chairman, for far too long, American Indians have faced undue hardship caused by continuing oppression and economic obstacles. As a group, American Indians are handicapped by a bureaucratic governmental system and misconceptions by mainstream society that make it difficult to succeed economically and survive culturally. If the critics of Indian gaming have their way, nothing would change.

Recently, there was an article in a magazine that quoted one of Secretary Babbitt's spokespersons about the economic difficulties faced by American Indians. That person said that American Indians have "been at the back of the line for most of the history of this country, especially economically."² I imagine that you know how difficult it has been for the American Indian to be at the back of the line. The statistics are

appalling -- grinding poverty has contributed to an accidental death rate that is 295 percent higher for American Indians than the general population, a suicide rate that is 95 percent higher and an alcoholism rate that is 663 percent above the national non-Indian average.\3 American Indian youth also drop out of school at a 35.5 percent rate which obviously results in staggering unemployment figures.\4 Nearly 15 percent of American Indian males and females over 16 years of age are unemployed.\5 That is more than double the U.S. average. You probably also know that there are many tribes with unemployment over 50 percent.\6

Indian gaming is helping the American Indian community to improve their situation. Gaming revenues are helping tribes to build roads, water systems and health centers, fund day care centers for our children and seniors and job training programs for our unemployed, provide scholarships for our students and funds for new Indian-owned business ventures.

The threat to these and other economic and social gains is well underway. Since the passage of the Indian Gaming Regulatory Act in 1988, the American Indian community has been attacked for its use of the one economic vehicle that, so far, has proven to be financially beneficial to the Indian and non-Indian community. Through gaming, American Indians are only striving for economic self-sufficiency, self-pride, self-determination and self-governance which is the declared policy of the Act.

How did we get here -- to this point where only congressional action can resolve the issues facing Indian gaming? On June 10, 1986, the United States Supreme Court determined that it would review the decision of the Federal District Court 9th Circuit in *California v. Cabazon Band of Mission Indians*. Two hundred fifty-nine days later, the Supreme Court of the United States, in a 6 to 3 opinion, backed the rights of tribes to operate games, without state governing, where such games are not criminally prohibited by the law of the state. This was a landmark decision and one which gave American Indian's hope for a better economic future.

Following the Supreme Court decision, there was confusion. The confusion created chaos, and, ultimately, legislation was necessary. That legislation was the Indian Gaming Regulatory Act -- its purpose was to resolve the differences between the American Indian community and the opponents to Indian gaming. The Act legitimized the Cabazon decision. It provided the legal framework for tribes to open gaming operations. Bruce Smith, publisher of Gaming and Wagering Business magazine, probably best summarized how the American Indian community got to where we are today saying that Indian gaming was won through, "lawsuits, congressional hearings, lawsuits, an Act of Congress, lawsuits, some state governments taking the lead in negotiating compacts, lawsuits, footdragging by other state governments, lawsuits, intelligent planning, lawsuits, the selection of some good management teams, and more lawsuits."7 As more and more states refuse to abide by the compacting provisions in the Indian Gaming Regulatory Act, tribes will likely be forced to rely on litigation

further burdening the court system unless a legislative solution is reached.

When the Indian Gaming Regulatory Act was first passed, many expressed deep concern about the ambiguities in the law and the obvious incursions that the Indian Gaming Regulatory Act made into tribal sovereignty. Even so, we were encouraged that the principal goal of the federal Indian policy as stated in the Act was to promote tribal economic development, tribal self-sufficiency and strong tribal governments. Everyone involved in the debate knew that the intention of the Act was to help give the tribes the opportunity to achieve the purposes stated in the landmark law through the revenues generated through gaming enterprises. Indeed, the Indian Gaming Regulatory Act seemed to give us another avenue by which we could create jobs by developing a gaming enterprise.

As chairman of the National Indian Gaming Association, I have watched the development of Indian gaming enterprises closely and with care. I personally visited reservations around the country and studied the gaming enterprises that have been developed. I spoke with tribal leaders and learned firsthand the benefits that had accrued to these tribes as a direct result of these operations. Jobs were created where there were no jobs. Income was generated where before there had been no tribal income. I have seen small tribes that had little hope of any kind of self-supporting existence above the poverty level transformed into centers of economic activity, vitality, pride and a sense of accomplishment. I've witnessed the economic benefits that surrounding non-Indian communities enjoyed. I'm proud of the record of Indian gaming enterprises.

Let me again highlight some of the good things that Indian gaming revenue has produced. Gaming revenue is building schools, hospitals, homes, roads and other infrastructure. It is funding Head Start programs and day care centers for our children and seniors. There are operational police and fire departments. And, gaming revenues are being used to help American Indian entrepreneurs start Indian-owned non-gaming businesses. These are essential elements to a healthy social community structure and economy. Those American Indian communities with gaming operations are using more of their money and less federal revenue to fund their community projects without federal taxpayer money. Let me say that again, many of the gaming tribes are funding these community projects with less or sometimes even no federal taxpayer money.

In 1991 Indian gaming comprised 1.78 percent of the gaming marketplace.⁸ That totaled \$ 5.4 billion out of \$ 304.1 billion in revenues for the year.^{9&10} For the American Indian community, this money means economic hope. There are several areas of economic benefit: public assistance expenditures decreases; jobs for American Indians and non-Indians increases; and economic benefits to surrounding communities are enhanced. Probably the greatest impact is that gaming revenues are helping tribes to establish a true economic system.

Today, I hope you will look at the ways in which gaming personally affects individuals. National financial and social statistical data are difficult to compile and I am working to establish a more streamlined system for the collection of economic impact statistics. Instead of looking at the macro picture, let's talk about the micro -- the impact on people. I believe that is how the benefits of gaming should be measured.

Gaming revenue has a profound impact on each individual whose tribe has a gaming operation whether it is a bingo hall or a casino-like establishment. It provides real services for real people. If gaming revenue provides just one aging senior citizen with home care...if it helps educate just one child...if only one family is able to come off of the federal welfare roll...if a single alcoholic or drug dependent person is rehabilitated, then Indian gaming is successfully meeting its objective. Is it not?

Mr. Chairman, I have some local statistical information that demonstrates the impact of gaming revenue on individuals.

I won't speak too much about Minnesota because my good friend who is testifying today will paint the picture in his state. However, let me point to one astonishing accomplishment in the state. Just in Minnesota, there are eight rural communities that benefit from tribal gaming jobs that have allowed the federal government to cut Aid to Families with Dependent Children by 14 percent.¹¹ Statewide the figure is 17 percent.¹² With every hire of an American Indian, federal unemployment payments are no longer necessary.

Not only were the tribes in Minnesota able to reduce the amount of federal aid that they receive, but tax revenues pumped \$ 30.4 million into the federal treasury and \$ 6.26 million into the state budget.¹³ The state budget which is responsible for dispensing services like the new *Minnesota Care* program which seeks to provide health insurance coverage for the poor.

The economic benefits to surrounding communities includes jobs for non-Indians as well as American Indians, sales and hotel tax revenues for city governments, federal employment and social security taxes, and a general economic stimulation. Local communities have filled hotel rooms and have immediately benefitted from tribal spending for goods. For example, in New Mexico the Sandia Indian Bingo operation purchased approximately \$ 1.6 million in supplies from vendors last year, mostly with non-Indian businesses.¹⁴ During the past six years, there has been an increase of about 12 percent each year in gross revenues from bingo in the state of New Mexico.¹⁵ Spending on non-Indian goods and the economic impact on the local community are consistent with the growth rate.

Going back to Minnesota, the Minnesota Planning Department estimated that the statewide impact of tribal gaming amounted to approximately \$ 550 million in 1991.¹⁶ Federal income, Social Security and unemployment taxes will come to approximately \$

35 million for 1992.\17 Some of that tax revenue is being used to extend the unemployment benefits for which President Clinton fought.

Not only was the Yavapai-Prescott tribe in Arizona on the verge of extinction, but the city was also facing hard times. Indian gaming has been a tremendous boost to the local community. Kathy Haley of the local Chamber of Commerce told the press that "retail sales are up, and we're seeing the hotel and motel industry up particularly."\18 Even the Prescott, Arizona city manager declared the gaming operation a success when he said that the operation was "an overall asset. Because it's small and relatively well-managed, we've seen no real negative community impact..."19

The shortage of Indian-owned businesses has resulted in reservations retaining little of the federal aid that is granted. Without gaming enterprises, it is estimated that, in some areas, 92 cents of every dollar earned on a reservation are spent outside the reservation because there is not a developed economy.\20 Looking at the problem of federal aid from this perspective, it appears that federal monies can only help sustain tribes but not enhance their ability to build businesses and therefore a thriving economy.

However, the United Sioux Tribes of South Dakota have made close to \$ 10 million in loans to Indian cattle ranchers.\21 The Flandreau Sioux community in South Dakota is investing in a mini-mall that does about \$ 1 million a year in business and a hog-processing plant that produces another \$ 400,000 each year for the tribe.\22

Gaming provides jobs for American Indians and non-Indians increases. In Iowa, the Omaha tribe has faced unemployment as high as 80 percent.\23 Today, that figure is significantly lower meaning fewer people are relying on federal welfare. Overall, the Omaha's payroll totals approximately \$ 4 million yearly.\24 Operating expenses are in the range of \$ 6 million a year.\25 The Winnebago Tribe of neighboring Nebraska now employs 141 tribal members which is about 40 percent of the tribe.\26

Tribal revenues support tribal services increases. In California, the Sycuan tribe is using gaming revenue to build suburban homes, pay for full life and health insurance policies and provide an annual payment to each tribal member. Each individual is encouraged to use their annual payment to invest in business ventures as a way of trying to diversify the economic base. I can say that the diversification program is working as the tribes has plans to build an all-suite hotel, a senior citizens home and a winery.

Too often I have heard people say that Indians don't pay taxes. This is not true. In fact, the majority of American Indians pay most taxes. I just told you about the taxes that tribes in Minnesota and New Mexico paid.

The fact is that all American Indians pay federal income tax and most pay state income tax. All American Indians who work for gaming establishments pay FICA and social security taxes as do the tribal gaming establishments that employ them. All

gaming establishments are required to pay unemployment taxes. Only the American Indian homeowners who reside on federally recognized tribal land are exempt from property taxes. And, finally, sales taxes are applied to goods bought on tribal lands and all American Indians pay for goods and services bought off the reservation.

I want to finish highlighting the economic benefits of gaming to people by saying that Indian gaming is still in the formative period. I believe that as we gain more experience and business expertise the potential of Indian gaming to help our people in our community and those in the surrounding communities as well as the federal government is unlimited.

Mr. Chairman, I am encouraged by the economic discourse that has recently taken place here in Washington. President Clinton has called on all Americans to sacrifice. The American Indian community has sacrificed but we are not prepared to just walk away from a proven economic tool. With the federal treasury under severe constraints, gaming revenues provide the funding necessary to carry-out programs that are already no longer federally funded and to develop additional tribal services that are needed by the tribal community. Tribal governments have responsibilities to their members just as states are accountable to the residents. As more and more state governments use gaming enterprises to generate revenue, why shouldn't tribes have the same opportunity to provide services to their members as states have to serve their residents?

In his inaugural address, President Clinton said, "Raised in unrivaled prosperity, we inherit an economy that is still the world's strongest, but is weakened by business failures, stagnant wages, increasing inequality, and deep division among our own people." Mr. Chairman, the American Indian was never able to share, to experience the unrivaled prosperity President Clinton mentioned. However, the American Indian was weakened by business failures, increasing inequality and deep division among the American people. Mr. Chairman, when will the American Indian be presented with the opportunity to share in this country's great wealth? How long must the American Indian wait for an equal opportunity to become economically self-sufficient?

President Clinton also said in his inaugural address that, "It is time to break the bad habit of expecting something for nothing, from our Government or from each other." Mr. Chairman, the American Indian community is taking it upon itself to meet President Clinton's challenge.

No one should doubt that Indian gaming is proving to be an economic tool that the American Indian community can develop and use to achieve some measure of economic self-sufficiency. American Indians want to fulfill their traditional role of providing for their own. However, the current atmosphere and the comprehensive campaign conducted by the opponents of Indian gaming are making it impossible for American Indians to provide for their neighbors as much as we would like. Too much

money is being used for litigation to defend our right to establish gaming operations which has been affirmed by the Supreme Court and written into federal law.

The fact that some states are engaged in substantial campaigns designed to deny tribes the opportunity to develop economic opportunities in violation of the Indian Gaming Regulatory Act is frustrating. Many of the states where tribes are having difficulty negotiating compacts is in states where the state is engaged in gaming activity or negotiating with non-Indian gaming enterprises. As state governments' search for additional revenues, and look to gaming as a boost to the states' coffers, tribes will continue to be rebuffed or face extremely arduous negotiations without a congressional solution.

More than 30 states are operating lotteries and video lottery terminals are used in thirteen states. The city of New Orleans recently approved plans for a casino and Chicago has casino plans under serious consideration. Even river boat gaming is making a comeback with several states operating or considering approving private river boat operations. It should not surprise you but there are over 50 gaming bills in state legislatures across the country. There is even an official state report in California (produced by the governor's Office of Planning and Research) that suggests that the state should consider legalizing gaming operations as a means of creating revenue and jobs.

The ambiguities in the Indian Gaming Regulatory Act are being exploited and abused by opponents to Indian gaming. The system set-up in the Indian Gaming Regulatory Act is not working as I believe Congress intended.

The groups that oppose Indian gaming will say or do just about anything to ensure that they are successful in their attempt to push the American Indian economic agenda to the back once again. There has been factually baseless accusations by several opponents to Indian gaming including several broadside attacks against American Indians that were spurred by a report issued by the Inspector General of the Interior Department which suggested that lawyers and management consultants conspired to swindle \$12 million from various Indian gaming enterprises, although no one was named and not one concrete example of illegal activity was cited in the report. If the members of this committee were to take a closer look at Indian gaming, I am sure that he would find what Mr. Paul L. Maloney, a senior counsel for policy in the Department of Justice Criminal Division, found and subsequently told the Senate Committee on Indian Affairs last March 18 when he said that "the perception in the media and elsewhere that Indian gaming operations are rife with serious criminality does not stand up under close examination." Even though I believe attacks like the one cited are erroneous, the Inspector General's report has enhanced our resolve to implement our own approval process for management consultants as well as work with the appropriate federal authorities to implement sound regulatory guidelines.

American Indians recognize the need for safety and soundness in gaming, in fact, we are more concerned than anyone, because we recognize that there will be a heavy public relations and regulatory price to pay should our enterprises fall prey to criminal elements. But we must not become so preoccupied with the safety and soundness issue that we do not allow Indian tribes to take the chance to develop gaming as an economic tool if they wish. Without this economic tool, the American Indian community has one less economic avenue to explore. And, without available and viable economic opportunities that American Indians can develop on their own, where will our community turn-to for economic support? If the Congress of these United States decides to deny gaming as an economic tool, small tribes in rural areas which have little or limited resources for tribal enterprises would greatly suffer. Without employment options for their members, these rural smaller tribes would face severe consequences. Of course, larger tribes would also be injured.

The compacting process is obviously a problem. States are using the 10th and 11th Amendments to the United States Constitution as a way to avoid negotiating with tribes as stated in the Indian Gaming Regulatory Act. To resolve the 10th and 11th Amendment dilemma, I believe that the Congress must clearly indicate in legislation that it is abrogating state immunity when the state fails to abide by the negotiation procedures stated in the Indian Gaming Regulatory Act.

Mr. Chairman, I urge you to support the rights of American Indians to take the chance to develop gaming as an economic tool if they wish. The struggle for economic prosperity is difficult and without a good location and a lack of natural resources or anything else that could spur economic development, tribes will once again face a pathetic economic and social environment with little hope for the future. If the Congress were to take the right of American Indians to establish gaming operations, it is not too difficult to look to the future and see an aging senior citizen on one of America's reservations without home care...another American Indian dropout...one more American Indian family on welfare...a tribal family without adequate housing.

Mr. Chairman, I again want to thank you for the opportunity to talk with you and the members of your committee about the lives of American Indians and the beneficial impact Indian gaming has had so far. Thank you for your leadership. There is a great responsibility that each member of this committee has to bear. Make no mistake, the American Indian community is looking to the members of Congress to help resolve the issues. You are going to make decisions, as you do everyday, which will for many years, perhaps for many generations, affect the American Indian community for better or worse.

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Supplemental Information

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Mr. RICHARDSON. The gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

I appreciate your testimony. I have a couple of fairly quick questions. Dr. Murray, you are an economist and you were commenting on your surprise at the success of the gaming. Isn't it partly because they are not doing it around them? If you had any sort of enterprise like this that was saleable and the people around you were not offering it, wouldn't you expect it to be successful?

Dr. MURRAY. Not necessarily. A monopoly is only significant if you have a product that people want. Presumably people want this product.

There are situations in places like Nevada where gaming is allowed throughout the State and individual enterprises are successful even in the face of competition. In the State of South Dakota, where the second largest source of revenue is from the video machines, yet the Indian casinos are doing quite well. Deadwood, South Dakota, is a non-Indian gaming community in South Dakota as well. So in other words there were simultaneous private casino cities, there are video machines, and there are Indian casinos operating simultaneously in South Dakota successfully.

Mr. THOMAS. So if Indian gaming were tied to the government, that wouldn't make a difference?

Dr. MURRAY. Competition would probably make a difference. One of the interesting things, I note that one of the concerns of the committee here and the discussions has been to put limits on Indian gaming. I would note that the market will put limits on any kinds of gaming, that people are only going to spend a certain percentage of their income on this activity.

It is my judgment that the lottery markets, for example, have matured. In most cases, including Wisconsin, the bingo markets have matured, and that they will only grow as fast as income and population grow. Class III type gaming is a brand-new enterprise in this situation and that is why it is growing so rapidly, but it too will mature.

Mr. THOMAS. One of your last comments was that they ought to have the same opportunity as the people around them and the people around them are not doing gaming, so I don't understand what you meant.

Dr. MURRAY. In the case of the parallel situations with respect to South Dakota, for example, doesn't that make the point that you were asking? Inasmuch, were you suggesting that Indian gaming would not be successful if there were competitive activities?

Mr. THOMAS. I guess I am grappling with the notion that your point seemed to be that tribes deserve the same opportunities as the people around them and the States' argument is that people around them are not allowed to do it, and therefore, there is a conflict.

Dr. MURRAY. Maybe the point was misconstrued. What I was arguing in my presentation, and I have submitted my prepared remarks—maybe I should spell those out more—the difference between what had happened historically with respect to policy and what gaming does is in terms of the magnitude of the activity relative to the place that it occurs. In other words, the other things were very small individual enterprises in Indian communities.

Gaming is big business in Indian communities. It is not big business by state or national standards to any great extent. But when concentrated on a reservation it is big business and allows for employment of everyone and allows for revenues that are meaningful in Indian communities. While those revenues might represent a small fraction of revenue to a state, they would represent a large revenue to a small community.

Mr. THOMAS. Chairman Ellis, you talked of the notable progress that has been made on some gaming projects and substantial revenues that have come to the reservation. How does that impact the other income that comes to all tribes from the BIA?

Mr. ELLIS. As you well know, the difference in size of reservations in Minnesota is large and some of them are really minuscule. Take the Mdewakanton Sioux community where a casino is located. It has a population of 200, whereas on my Leech Lake reservation we have a population of 7,000 and a land mass of 695,000 acres. Mdewakanton Sioux have a small community. The revenues at Mystic Lake derive from the population, which they have the market from the St. Paul-Minneapolis area versus what we have in northern Minnesota, population very small, the revenues are different from small communities.

Mr. THOMAS. Do they impact the other kind of revenues that come through the normal processes of BIA?

Mr. ELLIS. On the Mdewakanton Sioux reservation, we still receive state and federal funds. We need those funds. We are in an infancy stage. Leech Lake has been in operation since 1982. That started with a small bingo operation. Two years ago we started our casino operation. So revenues for different places are completely different from Mystic Lake.

Mr. THOMAS. Thank you very much.

Mr. RICHARDSON. The Chair recognizes the gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman. I would like to talk to Dr. Murray on the economics of this for a moment.

I am from California. We have 90-plus tribes in the State of California, a highly urbanized State, 33 million people, different from most States in the Union. If IGRA is recognized to include all types of class III gambling, and say half of the tribes in the State of California decide to engage in that type of activity, do you believe that there could be market saturation at some point?

Dr. MURRAY. Absolutely.

Mr. CALVERT. Carrying that further a bit, gambling is big business. It certainly is in Nevada and it is in California. We do have certain forms of gambling and that is the logic that is being used to get into class III gambling. If gambling is allowed on reservations, class III—this may be more of a political question but maybe for the whole panel here—do you believe that the State or any State may decide that it is in their best interest at that point to go ahead and allow legalized gambling within the State and then put that gambling operation in more of an urban setting which would have an easier locale for the general community to locate at? Do you think that might be a logical conclusion?

Dr. MURRAY. I couldn't hear quite everything that you said.

Mr. CALVERT. What I am getting at is if in fact class III gambling is allowed on all reservations, and take in the case of California, do you think that the State may start entertaining the idea of allowing full-scale gambling in the State to attract the revenue for themselves versus sharing that revenue with the various tribes; do you think that is a possibility?

Dr. MURRAY. I think it is a definite possibility. Right now in the State of Wisconsin we are voting on an amendment to the Constitution next week, and that issue is the question of whether or not the State ought to restrict gambling in the State to its present level and ought to change the Constitution to have a reinterpretation of the Lottery Act that was passed that was interpreted by federal courts to authorize class III gaming. And the issue on that that is being raised is the question, If there is a no vote saying not to support the amendment, the implication is that that may well be a signal to the government of Wisconsin to authorize additional gambling in Wisconsin outside the reservation.

Mr. CALVERT. If that happens in Minnesota or in California or any other State, and various tribes, as we have heard earlier, have used the revenue that they are accumulating through class III gambling to sell bonds, tax free bonds, to do necessary improvements on their tribe, is there a possibility that the bottom could go out of this market?

Dr. MURRAY. There is certainly a definite possibility. As I suggested, I think these markets will mature. And also, alluding to your comment about it being big business, I realize it is big business, but by that I meant that I think evidence from most material I have read suggests that no more than 1.5-2 percent of people's income will be spent on all forms of gambling.

What you are suggesting I think implies that if that revenue is to be shared by increasing numbers of facilities, then the competition will determine who gets it.

Mr. CALVERT. My fear is, if there becomes an over-dependence upon revenues from gambling and certain obligations are being made upon those revenue sources, and if that market expands to the degree that the revenue that is generated at the present moment is not able to offset those obligations, then it could put the Indian reservations in worse condition than they are now. Is that a possibility?

Dr. MURRAY. I think most of the ones I have observed have been cognizant of that and have restricted any kind of a retirement of any debt obligations to the period during which their compact is in force. I think it is highly unlikely that gaming could be legalized and put into place in competition with Indian gaming within the period of time that most of them have made commitments for with respect to debt obligations.

Mr. CALVERT. Are you speaking just in the case of your State?

Dr. MURRAY. I am speaking largely of my State, but you know some of the situations in Minnesota, as well, where that is true. They are not making really long-term commitments on those things. Most of them are restricting themselves in loans and obligations of that type to the period of compact.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. RICHARDSON. Mr. Keechi, what is the main reason we cannot have a Minnesota or Wisconsin experience in all the States with reservations?

Mr. KEECHI. I think it is a legal interpretation of the law. We have heard discussions about if any type of class III gaming is allowed in a State, then the tribes may very well have any type of full-blown casino gaming. Such as if the State allows para-mutual horse racing, then the tribes may have slot machines, et cetera. That is being argued in the courts.

I think primarily in Oklahoma where we have 36 federally recognized tribes, we do not have one tribe that is compacted as of this date. About three weeks ago I paid a visit to the State's negotiator and I said, okay, just sign a compact with me, horse racing, simulcast, whatever the governor allows, sign a compact with me.

As many of my tribes in Oklahoma were interested in simulcast, suddenly now they say that the previous administration in Oklahoma, the Attorney General had a opinion that did not permit tribes to compact for simulcast. So that leaves us horse racing.

We have a premier horse racing track in Oklahoma City, Remington Park. I don't think that any tribe could compete with that. So we are down to a point of getting nowhere fast.

I believe that this is probably a similar case throughout the Nation. We see in the case of Arizona where they left this to the mediator that, in the end, horses were changed in the middle of the stream. I sometimes wonder if perhaps what I have heard in Oklahoma and other States that I have visited is that all States are in need of revenues and there is some caution on the part of the States to allow Indian tribes to have an undue advantage that would be full casino gaming if they or their State government were not receiving some type of revenues themselves.

I don't know whether or not that is really the issue. I realize that States are like Indian governments, that we all need revenues. I think what the Pequots did in Connecticut certainly set a precedent for consideration by many tribes. I do not advocate that tribes share revenues; however, I think that each tribe being sovereign should feel free to decide for that tribe's own good.

The one thing, Mr. Chairman, that concerns me about the Act is that we Indian tribes are all put into one hat. We are so diverse in our cultures, our background in our States, I don't think you can make us all a square peg. So the Congress does have a problem, but I think what we have to do, and I believe it is terribly important, and just a couple of days ago I issued through the media an invitation to sit down with the governors, an invitation to sit down with the attorneys general and see if we can't open dialogue and find out what the problem is because I think it is important that we understand each other.

Only through dialogue can we do this. So, hopefully, perhaps someone here in the House or maybe on the Senate side might provide a forum for that with tribal leaders, governors, attorneys general, to see if we cannot find some end to this.

Thank you.

Mr. RICHARDSON. Vice Chairperson Doxtator, let me ask you about your testimony. You testified about the multitude of reservation infrastructure developments. I understand you built your own

sewage system, capital improvements and social programs that have been financed through some of the Indian gaming revenues. How much assistance does the State provide to your tribe, for instance, to carry out some of these services?

Ms. DOXTATOR. Of our total budget, there is less than 8 percent that comes from State or Federal dollars.

Mr. RICHARDSON. How much is State?

Ms. DOXTATOR. The State dollars are usually Federal pass-through dollars, not State-generated dollars. This is just an estimate off the top of my head. It is probably about 3.5 percent.

Mr. RICHARDSON. Has the State government benefited from your infrastructure developments?

Ms. DOXTATOR. Most definitely. The revenues that we are generating have not come from State dollars or Federal dollars, but they definitely do impact on the communities that are located near our reservation. We have allocated funds that are also appropriated for the hookup of the sewer for non Indian community members as well as our Indian community members.

We have also developed some cooperative working relationships with the Village of Ashwavan in the city of Green Bay for the development of an office park on our reservation. Each group has provided toward that effort. I think the State has definitely benefited from this through the jobs, taking people off welfare rolls, providing employment, taking people off unemployment and in numerous ways it has impacted.

Mr. RICHARDSON. I will go to Dr. Murray. I would like to get some statistics for the record, if you have them. What percent of legalized gaming nationally is currently on Indian lands? Would you have that statistic?

Dr. MURRAY. Well, the statistic that is often quoted is the one that is published in *Standard and Poors* and *Gaming and Waging Magazine* and these kinds of places. I don't think it is a very accurate number. I would judge it to be somewhere in the neighborhood of possibly 3 to 4 percent.

Mr. RICHARDSON. Now do we have any idea in Minnesota or Wisconsin how much the States are getting out of Indian gaming, either Dr. Murray or my two colleagues here? Are there any statistics?

Dr. MURRAY. With respect to how much the State is getting out of it?

Mr. RICHARDSON. Right.

Dr. MURRAY. Well, in terms of State taxes imposed on people who are employed and the suppliers and the taxes that they are paying, we are actually working up that data now. We don't have a final answer. We have individual statements from individual tribes with respect to how much they paid and how much the suppliers paid.

An individual Indian person in Wisconsin living on trust land is not obligated to pay State taxes, but the non-Indian employees all are and the suppliers and their employees all are. The multiplier effect results in tax revenue from that aspect as well.

Ms. DOXTATOR. I would like to add that also the people who have winnings have to put statements into the State for over a certain dollar amount that gets taxed at the State level.

Mr. RICHARDSON. Dr. Murray, would you provide that study to the committee when you complete it?

Dr. MURRAY. Yes.

[The information follows:]

The Economic Impact of American Indian Gaming on the Government of the State of Wisconsin

Benefits to Wisconsin State Government
From Indian Gaming
Millions of Dollars



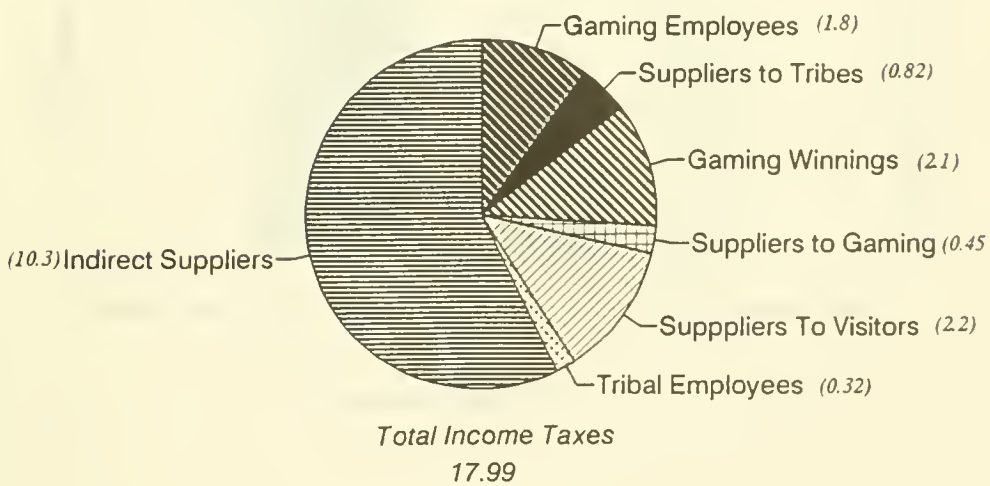
James M. Murray, PhD.
Community Economic Development Specialist

UNIVERSITY OF WISCONSIN-EXTENSION
COOPERATIVE EXTENSION

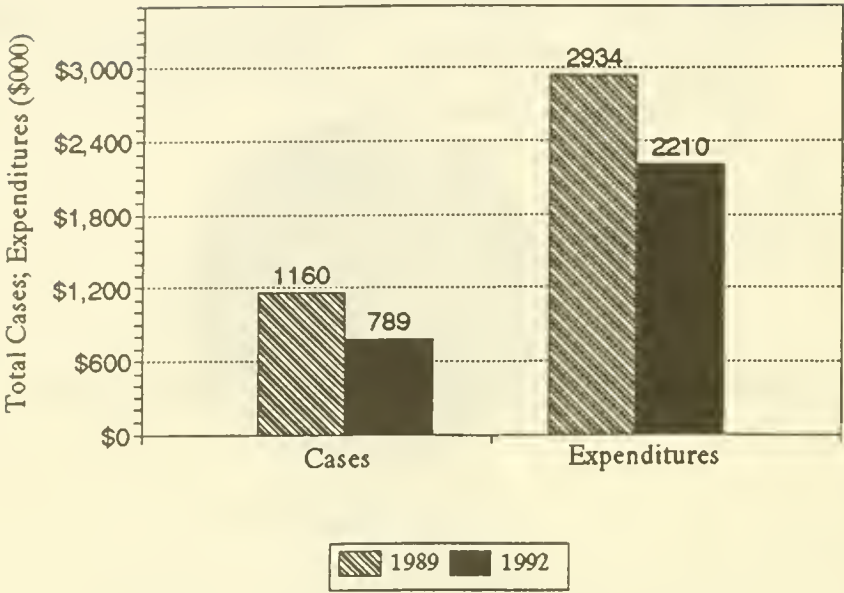
Wisconsin State Sales & Gas Taxes
Supported by Indian Gaming
Millions of Dollars



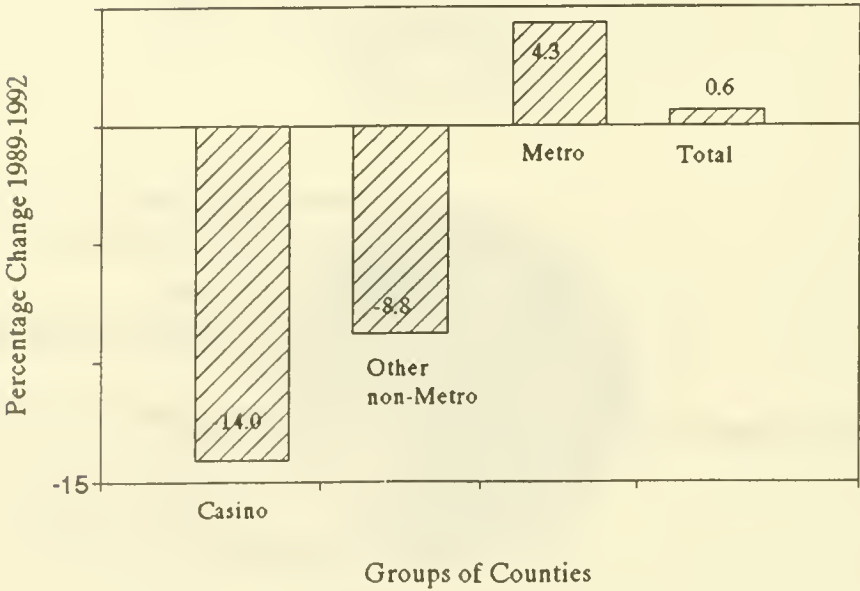
Wisconsin Income Taxes Supported by
Indian Gaming
Millions of Dollars



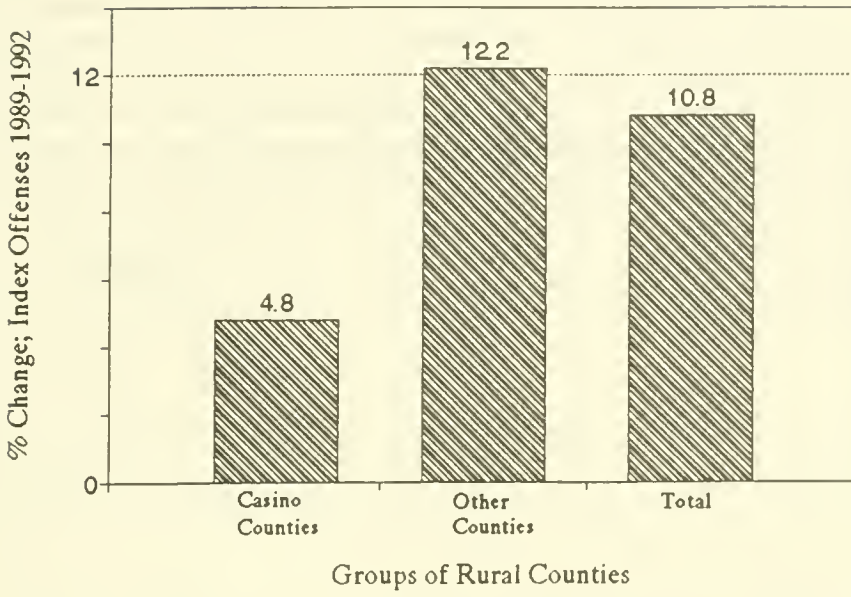
Changes in Relief of Needy
Indian Programs



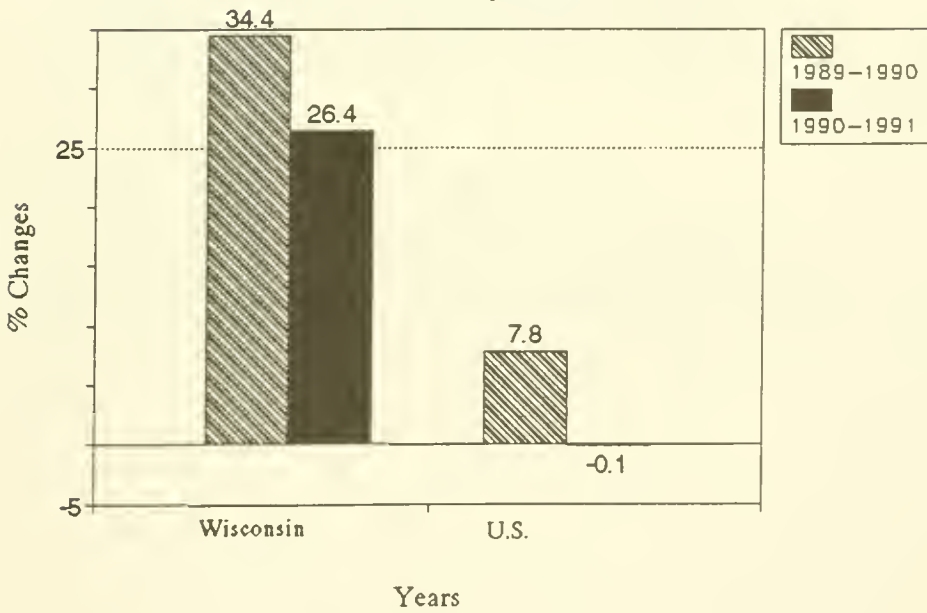
Changes in AFDC Benefits
Wisconsin 1989-1992



Changes in Crime Rates Wisconsin Rural Counties



% Changes in Wisconsin and U.S. Lottery Sales



Acknowledgment

I wish to express my appreciation for the help received in data gathering by Gary Mejchar, Research Assistant for this project, and for the help in preparing the final document by Christine Ann Vollmar, Clerical Assistant, UW Cooperative Extension, Green Bay. I assume full responsibility for the contents of the document, but the help of these two people was extensive and is much appreciated.

Jim Murray

The Economic Impact of American Indian Gaming on the Government of the State of Wisconsin

James M. Murray, PhD.

Introduction

In the study entitled, *The Economic Benefits of American Indian Gaming Facilities in Wisconsin*, published in the spring of 1993, I documented the economic benefits of American Indian gaming enterprises to both American Indian and non-Indian individuals and communities in the state of Wisconsin. That report measured benefits in 1992 and documented the 4,500 direct jobs in gaming, with 1,400 persons being removed from the ranks of the unemployed and 820 from the welfare rolls as a result of these jobs. In addition, the report estimated that another 5,500 jobs were created in construction, supplier firms to the gaming facilities, and from non-gaming visitor spending. As the money generated by these activities recirculated in the economy, this process added over 20,000 more jobs, suggesting that over 30,000 jobs in 1992 in Wisconsin were directly or indirectly supported by American Indian gaming facilities.

It is clear that the added income and sales generated more tax revenue for the state of Wisconsin, and that the reduction in unemployment and welfare benefits clearly reduced the cost of government in this state. However, some have asked for a more detailed and focused analysis of the impacts of American Indian gaming on state government. That is the intent of the research reported here.

The approach taken is to consider the benefits and costs to state government associated with American Indian gaming activities in Wisconsin. The process begins with a listing of the known and suspected benefits and costs, followed by an attempt to document and quantify these benefits and costs, as possible.

Major Benefits to Government of State of Wisconsin from American Indian Gaming:

- Added state income tax revenues:
 - From gaming employees
 - From gaming supported construction.
 - From employees and employers of firms selling to visitors.
 - From employees and employers of firms selling to gaming operations.
 - From non-gaming tribal government employees supported by gaming proceeds.
 - From employees and employers of firms selling to tribal governments.
 - From income tax on net gaming winnings.
- Added state sales tax revenues:
 - From purchases by gaming employees.
 - From purchases by gaming supported construction employees.
 - From non-gaming sales to gaming facility visitors.
 - From purchases by employees and employers of firms selling to visitors.
 - From purchases by employees and employers of firms selling to gaming operations.
 - From purchases by gaming supported tribal government employees.
 - From purchases by employees and employers of firms selling to tribal governments.
- Reductions in cost of transfer payments (welfare) to gaming employees.

Suggested Costs to State of Wisconsin Government resulting from American Indian Gaming:

- Loss of Lottery Revenue
- Cost of Higher Crime Rate
- Cost of Highway Modifications
- Cost of Gaming Oversight
- Cost of Compulsive and Problem Gambling.

Quantifying the Benefits to the Government of the State of Wisconsin from the Presence of American Indian Gaming Facilities:

Increased Wisconsin State Income Tax Collections:

Table I lists the total amount of income tax revenue to the state of Wisconsin which is supported by the income which is directly or indirectly derived from the gaming operations. The amounts identified as "Direct" reflect the immediate recipients of the expenditures by gaming customers. The "First Round Indirect" refers to those who receive income directly from the activities of the gaming operation. These two groups are not easily distinguished. The "All Other Indirect" derives from the "multiplier" or "ripple" effect of the gaming spending. It would include, for example, the income of a service station attendant who sells gasoline to a tribal employee whose income is supported by gaming revenues.

In addition to the employer and proprietor income realized by employees of the gaming operation and direct and indirect supplier firms, the net winnings by gamblers are also subject to Wisconsin income taxes. The estimated total Wisconsin state income tax liability in 1992 is about \$18 million. This does not include the tax on the income of management firms who contract to operate several of the Indian gaming facilities. This income is clearly substantial and is also subject to Wisconsin taxes, but no surveys were conducted to determine the amount of this income. The \$18 million is, then, a very conservative estimate.

Table I Estimated Wisconsin State Income Tax Revenues From Income Supported by American Indian Gaming Operations. 1992		
	Earnings (\$ mill.)	Estimated Wisconsin State Income Tax Liability
Direct:		
Gaming Employees	\$ 68.0	\$ 1,718,360
Construction Employees	2.0	70,000
Employees of Suppliers for Visitor non-Gaming Spending	63.0	2,205,000
First Round Indirect:		
Suppliers to Gaming Operations	11.5	450,000
Tribal Govt. Employees	20.0	320,000
Suppliers to Tribal Govts.	20.6	824,906
All Other Indirect:	293.6	10,276,000
Gaming Winnings (Gross \$400 mil.) Net of Losses by Winners	<u>53.2</u>	<u>2,130,000</u>
Total	528.7	\$17,994,266

The method of arriving at each of the items on Table 1 is described in the following narrative.

- **Added state income tax revenues from increased income of gaming employees who do not live on trust land.** (Fraction of Indian and all of non-Indian employees.)

Under treaties negotiated between the Indian Nations and the U.S. Federal Government, enrolled members of federally recognized Indian tribes are not required to pay state income taxes on income earned in facilities located on land held in trust by the federal government on behalf of the Indian community, if they also live on trust land. This was part of the price paid for the large tracts of land which were acquired from the Indian Nations in these treaties.

In estimating the amount of income taxes paid by the employees of the Indian gaming facilities, therefore, it is necessary to determine how many of the gaming employees are exempt from state income taxes. The first step in this procedure is to compare the Indian population of the counties in which the Indian reservations are located with the population of the reservations, as revealed in the 1990 census of population. The Indian people living on the reservation are assumed to be living on trust land.

In Wisconsin in 1990 the counties with Indian reservations had a total Indian population of 20,731, while the reservation populations in those counties totalled 12,300, indicating that about 59 percent of the Indian people in these counties live on trust land. The next step was to observe the number of Indian gaming employees living in each of these counties. It is assumed that the same percentage of gaming employees live on trust land as is true for the overall Indian population in each county. This procedure indicates that about 48 percent of Indian gaming employees, a total of 1,229 in 1992, live and work on trust land and are thus exempt from state income taxes.

According to the survey of gaming facilities, American Indian gaming facilities in Wisconsin in 1992 employed a total of 4,427 persons. Subtracting the 1,229 Indian persons who are exempt from state income taxes leaves 3,198 Indian and non-Indian gaming employees subject to state income taxes (72.2% of employees).

Using the combination of the reported income of gaming employees and the Wisconsin tax tables, it is estimated that the effective state income tax rate for this group would be about 3.5 percent of wages. With a payroll of \$68 million for Indian gaming facilities in Wisconsin, this procedure suggests that a total of about \$1,718,360 was paid in Wisconsin state income taxes by employees of the Indian gaming facilities in 1992. ($\$68 \text{ mill.} \times .722 \times .035 = \$1,718,360$).

To estimate the increase in state tax collections resulting from gaming, it is then appropriate to consider the prior status of gaming employees as revealed by the surveys of these people. As reported in the study of the benefits of Indian gaming in Wisconsin, noted above, 51.8 percent of the gaming employees in 1992 had been unemployed and/or on welfare prior to being employed by the gaming facilities. Those who were previously employed might be assumed to have paid the same amount in state income taxes had they not been employed by the gaming facilities. Using this assumption, the actual addition to state income tax revenues resulting from the Indian gaming employment in 1992 would be \$890,115 ($\$1,718,360 \times .518 = \$890,115$). This is clearly a very conservative estimate because many of the employees in the survey reported that they had been employed in seasonal and part-time jobs prior to being employed in the gaming facilities, and would likely have paid less in taxes than is assumed here.

- Added income tax revenue from increased income of owners and employees of firms supplying goods and services to gaming enterprises.

The American Indian gaming facilities in Wisconsin reported that in 1992, 91 percent of their non-capital goods purchases were from Wisconsin suppliers. The distribution of those purchases was as follows:

Category	Purchases (\$ million)
Supplies	12.4
Bldg. & Equip. Maintenance	12.4
Food and Beverages	9.3
Advertising	9.3
Insurance	3.1
Utilities	1.9
Non-Durable Manufacturing (Printing)	2.5
Transportation	5.0
Business Services	<u>6.2</u>
Total	\$ 62.1

Of this total, about \$56.4 million was purchased from Wisconsin suppliers. These purchases generated wage income of about \$10.3 million for Wisconsin employees, and over \$1.2 million in income for Wisconsin proprietors. The resulting total of \$11.5 million would generate about \$450,000 in Wisconsin state income taxes.

- Added income tax revenue from increased income of gaming supported tribal employees who do not live on trust land and from owners and suppliers of non-gaming goods and services to the tribal governments.

In 1992, the 11 federally recognized tribes (nations) in Wisconsin employed about 2,000 persons in non-gaming activities. Over 70 percent of the combined budgets of the Indian governing units was supported by gaming revenues. This suggests that about 1,400 of the jobs with the tribe are supported by gaming profits. This employment translates into about \$20 million in wages per year for gaming supported tribal employees. It is estimated that about 60 percent of tribal employees are enrolled members of these tribes who live on trust land and would, then, be exempt from state income taxes. The remaining 40 percent are both enrolled and non-Indian employees who do not live on trust land. Therefore, \$8 million of the 1992 tribal payrolls would be subject to state income tax and would generate about \$320,000 in state income tax revenue.

The tribal governments also purchase goods and services from suppliers in and out of Wisconsin. As reported in the above mentioned study of the benefits of Indian gaming in Wisconsin, the combined Indian communities received a total of about \$135 million as their share of the proceeds of the gaming operations. Based upon reports from the cooperating Indian communities, an input-output model developed at the Bureau of Business and Economic Research of the University of Wisconsin-Green Bay, and information from the Wisconsin Department of Industry Labor and Human Relations, it is estimated that the tribal governments purchased about \$58 million in goods and services from Wisconsin vendors in 1992, as follows:

Industry Group	Direct Purchases from Wisconsin Vendors (\$ millions; 1992)	Estimates of Supported; Employee Proprietor	
		<u>Payroll</u>	<u>Income</u>
Agric., Forest., Fishing	0.6	\$ 253,003	\$ 30,360
Repair and Maintenance Const.	4.1	1,277,416	153,290
Manufacturing	18.8	5,063,302	607,596
Transportation	4.3	1,241,653	148,999
Communications	2.2	137,353	16,482
Elec., Gas, Sewer, Water	3.9	966,846	116,021
Wholesales & Retail Trade	2.1	109,186	13,102
Finance, Insur., Real Estate	7.7	3,844,814	461,378
Services	<u>14.1</u>	<u>5,519,502</u>	<u>662,340</u>
Totals	\$ 57.6	\$18,413,075	\$2,209,569

These purchases supported employee and proprietor income in business firms within each of the affected industry groups. The estimated supplier payroll which was supported by tribal government purchases in 1992 was over \$18 million, and the estimated proprietor income supported was over \$2 million. This added income for Wisconsin employers and employees resulted in an estimated addition to state income tax collections of \$824,906.

● Added income tax revenue from the taxation of gaming winnings.

All gaming winnings are subject to both federal and state income taxes. Gamblers can deduct losses only to the extent of their winnings. The extent to which gambling winnings are reported for tax purposes is the subject of much speculation and some research. There is no readily available source of information on gambling winnings and the relationship of those winnings to losses in terms of the concentration of winnings relative to losses. The IRS includes gambling winnings in a broad category labelled "Other Income."

There is enforcement with respect to large winnings. Gambling facilities must complete and forward an IRS form W2G for large bingo and slot winnings. Above certain levels withholding is also required. The levels at which these are required varies with the games as well as with the size of the bets. The state of Wisconsin would thus be made aware of residents who have won large amounts in this state.

In Class II and Class III Indian gaming facilities, as in all similar gaming enterprises, the "house" takes a certain percentage of the wagers from each of the games. As a result, the total amount lost by customers will necessarily exceed the amount won. However, the winnings are received by only a fraction of the customers, thus redistributing the income risked by customers after the "take" by the house. This is what results in net taxable income by winners.

In the absence of available data, an effort is made here to estimate the net winnings from the Indian gaming facilities in Wisconsin, all of which are legally subject to the state income tax. It should be noted that the amount risked by state residents was originally subject to the state income tax which means that net winnings are essentially subject to double taxation.

The information used as a basis for this estimate includes that from the customer surveys conducted at the American Indian gaming facilities in connection with the study of the benefits of Indian gaming noted earlier. Also, in the study entitled Gambling in America, conducted in 1975/76 by the President Ford administration a sample survey in Nevada generated data on the percentage of gamblers who had net winnings and losses on an annual basis playing slots or table games, as well as the amounts won and lost. The International Gaming and Wagering Magazine and the Standard and Poors Industry Survey provide information on the handle, drop, and take in gaming facilities which has recently included better information on American Indian Class II and Class III facilities. These sources also estimate the amount lost by customers relative to the amount risked (drop).

The estimating method starts with the amount risked by the customers of Indian gaming facilities in Wisconsin (drop) divided among bingo, slots/video, and blackjack as reported in the survey of these facilities. This number is divided by the drop/session in each of the games to get total attendance. Total attendance is divided by the average number of visits per customer per year to get the number of persons playing each game.

The percentages who had net winnings on an annual basis, from the Nevada study, are then applied to the number of customers to estimate the number of customers who had net winnings over the year 1992. The distribution of the amount won from the Nevada study is adjusted by the increase in the average drop from 1976 to 1991 and then applied to the number of net winners for each game. The end result is the net winnings for each of the three categories of games. The total net winning in Wisconsin in 1992 in Indian gaming facilities are estimated to be \$53,239,241. This would be the taxable amount

assuming all gaming winnings are reported and all losses are credited against winnings in determining the tax liability. If we apply an effective rate of 4 percent to this amount, the potential state income tax revenue from this source would be \$2,129,597.

This type of a figure obviously implies a greater degree of accuracy than this estimate deserves. The best way to view this is to suggest that the gross winnings from at the Indian gaming facilities in Wisconsin in 1992 were about \$400 million. The taxable net income (assuming winners credit their losses against winnings) from this source was about \$50 million and the potential state income tax revenue was about \$2 million. It is often assumed that small gambling winnings are not reported by taxpayers, but no effort is made here to estimate the extent of under-reporting of income from this source.

Added Wisconsin State Sales Tax Revenues:

The method used in Table 2 parallels that in Table 1 in that the categories of "Direct," "First Round Indirect," and "All Other Indirect," are used as described for Table 1. In this case, however, rather than determining the likely income tax liability, it is necessary to estimate the amount to be spent on items taxable by the sales tax. As noted in Table 2, the estimated total sales tax and gasoline tax collections from sales associated with the operation of American Indian gaming facilities was over \$17 million in 1992.

Table 2 Estimated Wisconsin State Sales Tax Revenues from Sales Supported by American Indian Gaming Operations. 1992		
	Income or Sales Supported by Indian Gaming Revenues (\$ mil.)	WI State Sales Tax Liability
Direct:		
Gaming Employees	\$ 69.4	\$1,709,334
Construction Employees	2.0	50,000
Non-Gaming Visitor Spending (Assumes 75% of trips primarily for gaming)		
Eating and Drinking Places	87.5	4,375,000
Lodging	14.2	711,000
Transportation	70.0	14,193,000 (Gas Tax)
Other (Retail)	35.0	1,790,000
First Round Indirect:		
Gaming Supplier Firms:		
Employees & Employers	11.5	287,500
Tribal Govt. Employees	20.0	500,000
Suppliers to Tribal Govts. Employee & Employers	20.6	515,000
All other Indirect:	293.6	7,340,000
Total		\$31,470,834

The method of arriving at the estimates in Table 2 is explained in the following narrative.

- Added sales tax revenue from increased spending by gaming employees, gaming supported tribal employees, and owners and employees of supplier firms and visitors.

Based upon the spending patterns reported in the Consumer Expenditure Survey by the U.S. Department of commerce, approximately 50 percent of the income received by gaming employees, tribal employees, and employers and employees of supplier firms in Wisconsin would be subject to the Wisconsin state sales tax. The sales tax does not apply to grocery purchases, but does apply to most other consumer goods.

Using the income originating from American Indian gaming facilities, as noted above, the resulting sales tax proceeds would be as follows:

Taxpayers	Income from Gaming	WI State Sales Tax
Gaming Employees	\$68,385,336	\$1,709,334
Supplier Firm Employees	18,413,075	460,327
Supplier Firm Employers	<u>2,209,569</u>	<u>55,239</u>
	Total	\$2,224,900

As noted above, the gaming supported payroll for tribal employees was about \$20 million in 1992. This would result in estimated sales tax collections of \$500,000.

In the case of both gaming employees and tribal employees, about half of these people would have been employed had the gaming facilities not existed. Also, those who were unemployed and/or on welfare would have had income of about half what they had as employees and would have spent over half of that income on items subject to the sales tax. As a result, the net addition to sales tax revenues from the employees of gaming operations and gaming supported tribal employees would be approximately one fourth of the amount paid by these groups, or about \$552,334.

Using the same approach, the estimated sales taxes paid from the \$20.6 million in proprietor and employee income received by supplier firms to the tribal governments would be \$515,566 in 1992.

Based upon the survey conducted at American Indian gaming facilities in Wisconsin in 1992, visitor spending in that year was as follows:

Eating and Drinking Places	\$116,700,000
Transportation	94,620,000
Lodging	18,960,000
Other	<u>46,680,000</u>
Total	\$276,960,000

All of the spending at Eating and Drinking and Lodging establishments would be subject to the sales tax. The transportation expenditures were largely for gasoline, which is subject to a separate excise tax. Most of the "Other" spending would also be subject to the sales tax with the exception of that portion which is spent on groceries. This would suggest that these expenditures gave rise to about \$9 million in sales tax collections for the state of Wisconsin.

Not all of these taxes can be totally credited to the presence of American Indian gaming facilities, however. Two basic issues must be considered in deciding how much is properly attributable to these facilities. First, to what extent were these expenditures made in lieu of other spending on these same activities? The problem here is to determine how much the gaming customers would have spent on these same items had they not had the opportunity to visit the American Indian gaming facilities. As noted above, if the gaming facilities had not existed in Wisconsin, many of these customers would have travelled to neighboring states to gamble and Wisconsin would have lost this source of sales tax revenue. To the extent that gaming customers would have made similar purchases in Wisconsin without the gaming facilities, that amount cannot be considered a net gain in sales tax revenues.

Second, the gaming facilities cannot take full credit for the non-gaming spending by the visitors to their facilities. In surveys conducted at two of the northern Wisconsin gaming facilities, about 50 percent of the visitors indicated that gaming was the primary purpose for their trip. When vacationers travel to northern Wisconsin and stay in a lodging place and also visit a gaming facility while on that vacation, their spending, and the resulting sales tax collections, cannot all be credited to the gaming facilities. A much larger percentage of the visitors to the larger gaming facilities in central and southern Wisconsin appear to have gaming as the primary purpose of their trip.

The data on visitors are not available in sufficient detail to give a specific figure for the sales tax revenues originating from this source. However, it is reasonable to suggest that about 75 percent of the sales tax collections from visitors, or about \$6.9 million in 1992, can be credited to the presence of the gaming facilities.

It should be noted that the Wisconsin gasoline tax, while officially an excise tax, is also a form of sales tax. At 22.2 cents per gallon in 1992, this tax typically represents about 20 percent of the cost of gasoline at current prices. This would suggest that the visitors surveyed at the gaming facilities paid about \$19 million in gasoline taxes to the state of Wisconsin as a part of their non-gaming spending. If we use the same logic applied to other spending, as described above, about three-fourths, or \$14.2 million of this could be credited directly to the presence of the gaming facilities.

While the emphasis in this report is on the impact on state revenues, many of the counties in which the gaming facilities are located also collect a .5 percent sales tax, and all of these groups pay that in proportion to their payment of the state sales tax. Further, many of the communities in which the lodging expenditures occur collect room taxes, a significant portion of which can be attributed to gaming customers.

Reduction in welfare benefit costs resulting from the employment of welfare recipients by the gaming facilities.

Table 3 Reductions in Transfer Payments (Welfare) Resulting From Direct Employment by American Indian Gaming Operations: Wisconsin 1992		
	Metropolitan Counties	Non- Metropolitan Casino Counties
Average AFDC Benefit, 1992	\$5,664	\$5,106
Gaming Employees Previously on AFDC.	225	390
AFDC Cost Reduction	1,274,400	1,991,340
WI State Share Savings	649,944	1,015,583
Average Relief of Needy Indian Persons Benefits	2,676	2,676
Gaming Employees Previously on RNIP	75	130
RNIP Cost Reduction (100% State Funded Program)	<u>200,700</u>	<u>347,880</u>
Total Savings, State of Wisconsin from Reductions in Welfare Payments due to Direct Gaming Employment	\$2,214,107	

Source: AFDC and RNIP benefit levels from WI Department of Health and Human Services. State Share of AFDC from U.S. Department of Health and Human Services. Number of Recipients from Employee Surveys.

The survey of employees of the American Indian gaming facilities indicated that 820 of those employed in 1992 had been on welfare prior to their employment by the gaming facilities. The large majority of these people had been receiving AFDC benefits. The average AFDC benefit payments in the non-metropolitan counties with gaming operations in 1992 was \$5,106 per year. The average AFDC payment in metropolitan counties in 1992 was \$5,664 per year. Based upon the employee surveys and information from tribal and gaming personnel departments, it is estimated that about 225 of the gaming employees who had previously been on AFDC were employed in gaming operations in metropolitan areas (Green Bay and Milwaukee) while 390 were employed in the non-metropolitan gaming counties. Using the average payments to each group in their respective locations, it is estimated that AFDC benefits were reduced by about \$3,265,740 in 1992 as a result of the employment of AFDC recipients by the gaming operations. Approximately 51 percent of the cost of the AFDC program in Wisconsin is borne by the state, with the balance covered by the federal government. The state savings, therefore, is 51 percent of the total savings or about \$1,665,274.

The balance of the gaming employees who had been receiving transfer payments prior to their employment were on the Relief of Needy Indian Persons (RNIP) program. It is estimated that of the 820 employees on welfare prior to being employed in gaming, 205 were receiving RNIP benefits. The average RNIP benefit in 1992 was \$2,676 resulting in a cost reduction of \$548,580 in this program because of direct gaming employment. This program is totally funded by the state so the entire savings accrues to the state of Wisconsin.

Suggested Offsetting Tax Losses:

It has been argued that the amount spent on gaming is reducing expenditures on other non-gaming spending and, thus, is hurting non-Indian business firms who depend on the discretionary income of consumers for their sales. It is probably true that there is some reallocation of spending by gaming customers from non-gaming enterprises to gaming enterprises, but this cannot be viewed as a "zero sum game" problem. A zero sum game would suggest that every dollar spent at gaming facilities in Wisconsin is reducing spending in other Wisconsin establishments by one dollar.

The first fallacy in that argument relates to the fact that a new source of spending, such as the addition of gaming opportunities in Wisconsin, increases the rate of circulation of consumer spending. The money spent on gaming is used to pay employees and suppliers of other goods and services to the gaming facilities, with the net profits accruing to the governing bodies of the Indian communities. The recipients of these proceeds respond them very rapidly, with the bulk of the proceeds being spent on goods and services from Wisconsin suppliers, including restaurants, taverns, and other tourist and non-tourist oriented enterprises. As a result, the total gaming dollar is not lost to the economy, but rather tends to increase the recirculation rate of dollars spent in local and state economies. To the extent that the recipients spend the receipts outside the state, the gaming dollars are lost to other economies.

A further point to be made in this context is that if all of the resources, including all of the adult labor force, were fully employed prior to the introduction of gaming, then there would be a greater case of the argument that gaming is redistributing income rather than adding to income. However, as noted above and in other studies cited, about half of the persons employed by the gaming facilities had previously been unemployed. The added income enjoyed by these people actually increases the base for spending in all Wisconsin enterprises.

A second fallacy in the argument that amounts spent on gaming are lost to other enterprises, is based upon the assumption that these dollars would have been spent in Wisconsin had the gaming enterprises not evolved. Whether or not gaming operations had evolved in Wisconsin, many of the dollars spent on gaming would have been spent on this activity in other states. Even before the advent of Indian gaming facilities, many people travelled to Las Vegas and other locations to participate in games of chance, and continue to do so. The more obvious competition for the gaming dollar, however, is from Minnesota and Michigan, bordering states which also have many Indian gaming facilities. Had no Indian gaming facilities developed in Wisconsin, it is clear that very sizeable percentages of amounts wagered at these locations would have been wagered in a neighboring state.

According to customer surveys conducted at Wisconsin gaming facilities in 1992, about 20 percent of gaming customers came from outside the state. Based upon similar studies in Minnesota and Michigan, it would appear that each of these three states is capturing about the same in gaming from bordering states as they are losing to these states. The point to be made here, however, is that if Wisconsin did not have Indian gaming facilities, the money now spent in these facilities would not all be spent in non-gaming facilities but, rather, much, if not most, would be spent on gaming in other states.

This is an important point to be made in assessing the impact of gaming on government tax receipt. If gaming spending is simply a dollar for dollar substitute for non-gaming spending, it might be argued that the taxes based upon gaming proceeds are simply offsetting those lost from non-gaming proceeds. This is clearly not the case.

Suggested Costs to the Government of the State of Wisconsin Resulting from the Development of American Indian Gaming.

In the course of this research, I have made a concerted effort to both identify and quantify the possible costs to the state government which could result from the development of American Indian gaming facilities in this state. To date, I have found that most of the suggested costs cannot be supported with hard evidence and fall into the realm of conjecture. With respect to the issue of the possible costs associated with compulsive and problem gambling, there may be real costs here, but they are very difficult to quantify, and it is even more difficult to isolate the impact of American Indian gaming from all of the other outlets for this addiction. I will attempt to identify the source of suggested costs and give the evidence which I have found to date which is relevant to these costs. To this will be added a narrative and suggestions regarding what further research might be undertaken to pursue these matters further.

The fact that the major gaming activities in Wisconsin, including the lottery, the dog tracks, and the American Indian casino facilities have all been introduced within the past five years makes it especially difficult to obtain the necessary data base upon which to reach statistically sound conclusions. As these activities mature, and more experience with them can be observed, it may be possible to reach more reliable conclusions regarding both the costs and benefits of all forms of gaming in Wisconsin.

• Loss of Lottery Revenue.

Some state officials have suggested that Indian gaming has reduced the revenues obtained by the state from the state sponsored lottery. In testimony before the Arizona legislature, Mr. Dunleavy of the Wisconsin State Gaming Commission stated, "...we have seen a leveling off of our lottery proceeds which, prior to the inception of gaming, Indian gaming, had been increasing dramatically." (State of Arizona, Before the Joint Select Committee on Indian Gaming, June 2, 1993, Reporter's Transcript, p.5). Table 4 documents the gross revenue from ticket sales in Wisconsin for the period from the beginning of the lottery in 1989 through the year 1992. Also shown are the total lottery ticket sales in the U.S. for 1989, 1990, and 1991. The state has experienced a steady and sizeable increase in lottery revenues in each year, but the rate of increase has declined in each year. This decreasing rate of increase has been the basis for statements such as those made by Mr. Dunleavy. The pattern in Wisconsin's lottery, however, is very similar to that experienced by most states in the beginning years of this revenue source. At this time, 40 states have lotteries as a source of revenue, and as can be observed from Table 4, the revenues from this source for all states combined increased by a rate less than one-fourth of that in Wisconsin between 1989 and 1990, and actually declined absolutely from 1990 to 1991.

Table 4					
Wisconsin Lottery Ticket Sales				U.S. Lottery Ticket Sales (\$Mil)	
		% Change			% Change
1989	230,365,272			19,488.3	
1990	309,597,918	34.4%		21,016.8	7.8%
1991	391,397,029	26.4%		20,993.4	-0.1%
1992	449,056,375	14.7%			

Source: WI Legislative Audit Bureau and *International Gaming and Wagering Magazine*.

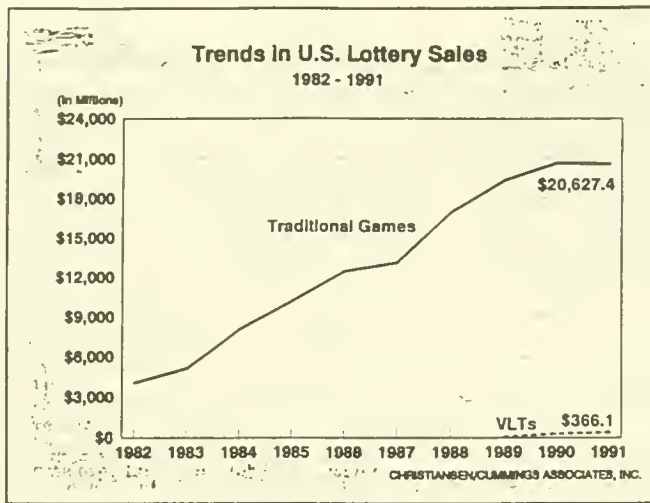


Figure 1

Source: *Gaming and Wagering Business*: July/August 1992, p. 32

On a state by state basis, it can be shown that large declines in lottery revenues have occurred in states which do not even have American Indian gaming facilities (e.g. Maryland and Pennsylvania) while some of the largest gains have occurred in states which have Indian gaming (e.g. Colorado, Minnesota). A very large percentage of the population participates regularly in state lotteries, while only a fraction of the population frequents American Indian gaming facilities. Most of those who participate in state lotteries never visit Indian casinos. The fact is that the lottery market has matured, as can be seen from Figure 1. When only a few states had lotteries, they would be able to sustain their growth by attracting customers from neighboring states, but now that 80 percent of the states offer this activity, they must rely on wagers by their own population. The percentage of income people are willing to spend on lotteries is limited and when the market matures, as it has in many states which have had this activity for more years than has Wisconsin, the revenues will increase only as income and population increase, or may even decrease. The point to be made here is that the decreasing rate of increase in Wisconsin's lottery proceeds cannot be attributed to the presence of Indian gaming.

It is undoubtedly true that in the absence of Indian gaming, some of the amount wagered in these facilities might be used to purchase lottery tickets, but the evidence suggests that the character and circumstances surrounding these two types of activity makes them much less than perfect substitutes. Surveys of Indian gaming customers indicate that the dominant reason for their participation in gaming is for entertainment and to be with friends. The dominant reason for playing the lottery is to dramatically change the bettor's income.

• **Cost of Higher Crime Rates:**

In the same hearings before the Arizona legislature, Wisconsin officials testified that Indian gaming was responsible for increased crime rates in this state. This concern was also expressed by some involved in public discussion groups held by UW Extension personnel in Burnett County. (Casino Gambling Study-Phase III; Identification of Community Leaders's Concerns and Issues Associated With the Impact of Casino Gambling, UW Cooperative Extension, pp. 10,11,18.) What solid evidence exists to support these contentions? There is no question that crime rates are increasing in Wisconsin, as they are throughout the nation. However, to attribute a portion of this increase to the development of Indian gaming requires that some very specific and detailed survey research be undertaken. That is clearly beyond the scope of this study. What is possible, is to observe the secondary data which is available and compare the patterns in those places which have Indian gaming with those which do not. For example, the number of full-time law enforcement employees has been increased as crime rates have risen. This is one measure of the cost of increased crime rates and it is expected that this cost would increase most rapidly in locations where crime rates are also increasing most rapidly.

Two of the major American Indian gaming facilities in Wisconsin are located in the major urban centers of Green Bay and Milwaukee. In these cases, the impact of the gaming facilities is significant, but so many other variables are simultaneously impacting on the number of law enforcement employees that it would require much detailed research to isolate the impact of these facilities in these large centers. The relative impact of Indian gaming facilities is more obvious in the smaller rural communities with Indian casinos. The number of law enforcement employees in rural counties in Wisconsin for the period from 1989 to 1992 are shown in Table 5.

Table 5 Full-Time Law Enforcement Employees, Rural Counties, Wisconsin						
	1989	1990	1991	1992	Absolute Change 1989-92	Relative Change 1989-92
Totals	1653	1769	1870	1973	320	19.4%
Casino Counties	343	350	366	393	50	14.6%
Non-Casino Co's	1310	1419	1504	1580	270	20.6%

Source: U.S. Department of Justice, *Crime in the United States, 1989-1992*.

Note: Casino Counties; Ashland, Bayfield, Burnett, Forest, Jackson, Menominee, Sauk, Sawyer, Shawano, Vilas, Wood.

This is the time period during which the Indian casinos evolved following the passage of the National Indian Gaming Act in 1988 and the resulting compacts negotiated with the state. As indicated in Table 5, the growth in law enforcement employees has actually been slower in those rural counties with gaming facilities than in those which do not have them. While a gaming facility now exists in Barron County (Turtle Lake), that facility opened in 1992 and, therefore, it has not been included as a casino county.

Perhaps even more revealing, are the data on criminal offenses as reported on Table 6. While the total number of offenses in rural counties increased by about 11 percent, the increase in casino counties was less than 5 percent while that in non-casino rural counties was over 12 percent. This evidence does not support the contention that costs are being incurred in casino counties due to higher crime rates associated with Indian gaming facilities.

Table 6
Total Index Offenses, Rural Counties, Wisconsin

	1989	1990	1991	1992	Absolute Change 1989-92	Relative Change 1989-92
Totals	42,562	44,372	46,935	47,174	4,612	10.8%
Casino Counties	8,078	8,343	8,611	8,468	390	4.8%
Non-Casino Co's	34,484	36,029	38,324	38,706	4,222	12.2%

Source: Wisconsin Office of Justice Assistance, Statistical Analysis Center, *Crime and Arrests*, 1990 and 1992 issues.

- **Cost of Highway Modifications.**

Some have contended that a major cost to the state which is associated with Indian gaming is the increased traffic and necessary highway modifications near the gaming facilities. In an effort to document this cost, contact was made with appropriate staff persons at the Wisconsin Dept. of Transportation. The cost of specific modifications at specific locations could be documented, but the Dept. of Transportation was not able to document the total cost of these modifications in the state. Furthermore, the DOT personnel indicated that Indian casinos are dealt with in the same manner as any other business enterprise in these situations. Entries, overpasses, and other highway modifications are made to accommodate shopping malls, factories, and other economic activities without any direct charge to the firms involved.

The DOT is largely funded by the gasoline tax and it is generally assumed that the increased traffic will generate increased gas tax revenues in support of the cost of highway improvements. As noted above, over \$14 million dollars in gas tax revenue is estimated to be attributable to the presence of Indian gaming facilities. With respect to the entries to the gaming facilities, and even some of the actual highway modifications, the American Indian tribes(nations) have generally covered the cost of these out of their gaming revenues.

- **Cost of Gaming Oversight.**

Under the National Indian Gaming Act and the resulting gaming compacts with Indian communities, the state of Wisconsin is responsible for legal oversight of the Indian gaming facilities. This includes the screening of individuals involved in gaming management as well as vendors, and the auditing and monitoring of gaming records. This activity occurs within the Wisconsin Dept. of Justice. Initially, the state assigned certain individuals the responsibility for gaming enforcement and the costs were included in the departmental budget. However, in 1993, the state has initiated a system of charges for the oversight services. These charges are levied on the Indian gaming operations and are more than sufficient to cover the cost of this responsibility. In fact, because most states with Indian gaming facilities have now initiated these charges, special legislation has been passed at the federal level to insure that the net revenue earned by states from these fees are not diverted into the states' general funds.

• **Cost of Compulsive and Problem Gambling.**

One of the most frequently cited concerns regarding the expansion of gaming opportunities in Wisconsin, and most other states, is the presumed increased potential for the disruption of lives as a result of excessive gambling by some individuals. Compulsive gambling is associated with addictive personalities, and is clearly a serious problem not unlike compulsive alcohol and other drug consumption, compulsive shopping, or other addictive behaviors. Problem gambling is comparable to problem drinking, etc., because it is not the result of an uncontrollable addiction but, rather, the result of less than prudent behavior. The question is, how and why might this add to the cost of state government?

To the extent that the productivity of compulsive or problem gamblers is affected, they may earn lower incomes and, therefore, pay fewer taxes. If the problem becomes sufficiently acute, it may result in the inability to continue to provide income to a family, and the family may become dependent on transfer payments which could be partly supported by the state. To the extent that counseling services are required to deal with these issues, agencies assigned this responsibility may obtain funding from the state.

While it is possible to identify these potential costs, to determine exactly what proportion is attributable to the Indian gaming facilities, and how much to the lottery, the dog tracks, or even to illegal forms of gambling, would require a very extensive and detailed study. Some compulsive gambling will occur whether gaming is legal or not, but most agree that legalization and the presence of facilities increases the potential for addictive personalities to gamble excessively. The Indian communities have expressed their concern for this issue as well, and several have sponsored programs for both the public, their own tribal members, and for their employees on these issues. Gaming employees in some facilities are being trained to identify and cope with suspected compulsive gamblers. All of this is being done at no cost to the state.

The Center for Gambling Studies at the University of Wisconsin-Parkside is attempting to develop techniques for identifying and coping with compulsive and problem gambling. These, and similar programs, should be encouraged and such groups may ultimately be able to estimate the cost of this aspect of gaming in Wisconsin and elsewhere. It should be noted, that it would be well for the state to consider similar efforts with respect to the costs of both compulsive and problem alcohol consumption. All of the evidence and documentation indicates very clearly that excessive alcohol consumption results in much higher social and real costs than does compulsive or problem gambling.

Mr. RICHARDSON. Mr. Ellis, do you have any numbers on that?

Mr. ELLIS. Thank you, Mr. Chairman. I did provide the committee with a copy of the Peat and Marwick study. In that study, it says that the payroll and related taxes we pay in the State of Minnesota in 1992 exceeded \$116 million. The direct payroll-related taxes exceeded \$36 million.

Mr. RICHARDSON. Thank you. The gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman.

If the total market—assuming the 3 or 4 percent is correct—today total gambling in the United States is on Indian reservations, how large of a market do you think that could expand to, hypothetically, if for instance California was able to get into class III gaming. I think the conservative estimate is that 50 cents of every dollar that goes to Las Vegas, which is a substantial gaming community, comes from the State of California.

Do you think there could be considerable growth in Indian gaming not only in California but throughout the United States? What type of market potential do you think there is for this? I would give that to Mr. Keechi.

Mr. KEECHI. As stated in *Gaming and Wagering Magazine*, and other publications, presently Indian gaming is about 4–6 percent. I think that if every reservation that would qualify for class III gaming were to open up, some of my people tell me that you would be looking at 17–18 percent of the total gaming enterprises in the United States.

I think that we should probably look at the other side, not necessarily in gaming but the potential for States to legalize gaming. We see more and more States realizing the revenues are great. So I think that if gaming is going to grow in any leaps and bounds, it is going to grow from the national perspective, not just Indian gaming.

In my opinion if the States have their way about it, the States will certainly expand gaming and they will make an attempt to hinder the proliferation of gaming on Indian lands.

I feel that gambling is a business. The American public that patronize gaming establishments are becoming more demanding. So my feeling and my advice to my fellow tribes is that they have a great opportunity on these remote reservations to make an end-destination vacation out of their tribal gaming enterprises and their lands at a time when the urban areas are growing and people are looking to get out of the city.

We see our national parks every year burdened by traffic and such. I think that the reservations offer something to the American public. Gambling is just one area of that. Many of my fellow tribal leaders with whom I have spoken indicate and agree with me that gambling is not the end fix-all for the tribes.

But it certainly provides much needed seed money to move into other areas. I do not think that any tribal leader desires to have all of his eggs in one basket. So we are looking to expand into other areas of enterprise to provide much-needed employment for our tribal members.

Mr. CALVERT. Chairman Keechi, has the National Indian Gaming Association done a study of any kind as far as potential market and where that market might be as far as, say, in my case, Califor-

nia? You mentioned the market could grow 17 to 20 percent. How much of that market would be in areas such as California, which have a high urban population?

Mr. KEECHI. I think certainly because of the population there and the number of tribes there the potential would be great. I understand that the National Indian Gaming Association has been a pledging association for a number of years. Because of the urgent need to have facts and figures ourselves, we are encouraging now our member tribes to give us estimates as to what the impact would be in their area.

We are running a little behind with that. But it is something that we feel is necessary. Certainly Wisconsin and Minnesota are a prime example of what Indian gaming should be. They provided studies with much-needed information so that gaming can be seen in its greatest reality.

I think we have to keep in mind that we are not only talking about class III gaming, such as what Minnesota and Wisconsin have, but a great number of our member tribes and those who are yet to get into gaming would probably start with bingo. Even a small bingo hall provides much-needed revenues.

So we do have to make certain that we classify bingo as class II as opposed to the slots and table games that are class III. It is something we are working on very diligently, and hopefully within the next 90 days or so, we will be able to provide Members of Congress with our final study as to that information.

Hopefully we will be able to work with respective elected officials here in answering their questions.

Mr. CALVERT. One more question for the entire panel. Of course, class II gambling is already allowed, for instance, in my State of California. But an issue of non-contiguous lands being used for class III or class II gaming for that matter, what is the position of the panel on that type of activity?

Mr. KEECHI. Coming from Oklahoma, as I say, where we have 36 federally recognized tribes and most of the tribes were moved to Oklahoma when it was Indian territory and we came from States to the northern area, to the eastern area, which we still consider our aboriginal homelands, I think it is grossly unfair that tribes cannot go back to their aboriginal areas and purchase lands for whatever purpose the tribe may see fit.

We feel that, for instance, the Delaware Tribe, we were in the States of New Jersey, Delaware, Pennsylvania, New York. We have treaties that moved us all across the country to Indiana, Ohio, Missouri, Kansas. We have ended up in Oklahoma on a piece of land that is 2,400 acres. We share that with two other tribes. We get 19 percent undivided interest of that 2,400 acres. Our 1,200 tribal members are in need of more property. We are looking at acquisitions.

I think when you talk about purchasing land, regardless of where it is at, the first question is: Are you going to put up a bingo hall or a class III casino? Again, too, I think that is unfair. But my feeling is that tribes should be allowed to go back to their aboriginal areas and purchase land for use any way the tribe sees fit.

Mr. CALVERT. Does the entire panel agree with that position?

Mr. ELLIS. Mr. Chairman, Mr. Calvert, we in the Minnesota Gaming Association, along with the State of Minnesota, we have an agreement that we will not expand off-reservation to purchase any lands for any other purposes. We have lived up to that agreement.

However, the State of Minnesota, in a battle right now with a legislature, passing by a 7-3 vote to allow video slot machines in every bar in the State of Minnesota. So we probably will pursue other gaming activities.

Ms. DOXTATOR. In Wisconsin we have left it up to each tribe in their compact negotiations with the Governor. It is a separate item for each government to negotiate with the State government. So it is a government-to-government relationship.

Mr. CALVERT. Now if I understood this right, Chairman Keechi, if in fact an Indian tribe in Oklahoma could trace back its aboriginal rights to Manhattan Island and decide to buy a block or two of land, it is your opinion that if in fact they are able to acquire that property, it is their right to develop that property and use that property in any way that particular tribe sees fit?

Mr. KEECHI. Isn't that the American way, that we utilize our resources however we see fit? I think certainly if it was General Motors or any of the large blue chip companies, they would not be asked what they were going to do with the land even if they were going to pollute the rivers or pollute the skies.

However, the process presently in the law is very complicated. I think the reality of a tribe purchasing outside its present area, such as in Oklahoma, is highly unlikely because the law says that local communities must give consensus. The governor of whatever State must give consensus. We find that the environment of local communities and State government is not conducive to Indian gaming.

So there are roadblocks and hurdles that we must overcome. It is a stacked deck. We are in the gambling business, but it is a stacked deck. For the most part, we are very poor tribes.

If you are going to fight State government or take on any battle, it requires a great deal of funding that tribes do not have. So I think that we must, as I stated earlier in my testimony, rely upon the fairness and the good judgment of the Congress. I cannot believe that the Congress would not allow any citizen of these United States, whether it be a tribal entity or an individual, to pursue the great American dream.

For the American Indian that great American dream is quickly becoming the great American nightmare.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. RICHARDSON. I want to thank this panel for some very outstanding testimony. We appreciate all of you staying. We appreciate your appearance today. We thank you.

PANEL CONSISTING OF HON. JACOB VIARRIAL, GOVERNOR, PUEBLO OF POJOAQUE, NM; NORMA MANZANO, CHAIRPERSON, SAN MANUEL BAND OF MISSION INDIANS, SAN BERNADINO, CA, ACCOMPANIED BY JERRY LEVINE, ESQ.; DANIEL J. TUCKER, CHAIRPERSON, SYCUAN BAND OF MISSION INDIANS, EL CAJON, CA, ACCOMPANIED BY GEORGE FORMAN, ESQ; AND KEVIN GOVER, ESQ., ON BEHALF OF THE PUEBLO OF TESUQUE, NM

Mr. RICHARDSON. I would like to call the next panel to the witness table. The Honorable Jacob Viarrial, Governor, Pueblo of Pojoaque, New Mexico; Honorable Norman Manzano, Chairperson, San Manuel Band of Mission Indians, Highland, California, accompanied by Jerry Levine, Esq.; and Honorable Daniel Tucker, Chairman, Sycuan Band of Mission Indians, El Cajon, California, accompanied by George Forman, Esq., and Kevin Gover, Esq., on behalf of the Pueblo of Tesuque, New Mexico.

I want to welcome the witnesses. We appreciate your patience. As I have indicated, your statements will be fully incorporated in the record. We will once again observe the five-minute rule. I would like to ask my good friend and the Governor of the Pueblo of Pojoaque, Jacob Viarrial, to please proceed and lead off.

STATEMENT OF HON. JACOB VIARRIAL

Mr. VIARRIAL. Thank you, Mr. Congressman. I am especially honored to be here because of you being a fellow New Mexican and being on this Committee. I am really honored. It is nice seeing you again. The Pojoaque Pueblo chose to get into gaming for several reasons. One is that we wanted to have all the gray areas cleared before we got into it.

So we got into gaming basically because we understood that the tribes that were already doing gaming were going to be grandfathered in, so that pretty much forced us to get into gaming.

We submitted a compact in early 1991. The Governor of the State, Mr. King, has refused to negotiate with us. We have called him. We want to talk to his staff but it has been like negotiating with dead people. We get no response from them. The Pojoaque Pueblo chose to get into gaming as we saw what other tribes were doing with their revenues derived from gaming. They were building schools, roads. They did away with unemployment and welfare dependency. They opened clinics and rehabilitated housing, improved line order staffing, strengthened tribal courts and other tribal institutions.

We also saw other tribes providing employment for thousands of Indian and non-Indian people. We also saw their tribes purchasing millions of dollars of goods and services from surrounding non-Indian communities and thus expand the tax base and revenue for local State and Federal Government. The Pojoaque Pueblo has been able to do the following because of gaming: Fund programs for the elderly, and start funding for the Poeh Cultural Center and Museum, which is essential to revive our once nearly extinct Tewaue culture. We've expanded our police department by 40 percent; we've underwritten 20 percent of tribal employees and funded overhead expenses for tribal operations; and we've provided signifi-

cant financial contributions to the enterprises in our shopping center, the ones that were hit hard by recession.

If gaming funds had not been there, we would have been forced to foreclose, the banks would have foreclosed on us. We subsidized improvements at our Pow-wow grounds in cooperation with a group that sponsors the Santa Fe Indian market. We assisted our tribal members in weatherization of their homes.

The Pojoaque Pueblo did all this without any outside help from any State or Federal funds and without using any management firm. These are things that we did that we did not have money to do before. We feel that the gaming revenue will do much more for the Indian population. That is the only way at this point to achieve self-sufficiency.

Mr. Congressman, about five years ago you asked me to undertake a project on waste water, to do a waste water study in the Pojoaque/Espanola Valley. We did get that steering committee going. What was requested by you was to determine to what degree the water was contaminated in the whole region and also to come up with recommendations.

Well, we found out that a lot of ground water was contaminated and we would need to put in a regional sewer system at a cost of \$100 million that would take over a 50-year period. The Pojoaque Pueblo with its gaming, the performance we now have, we feel we can make between \$10 million to \$15 million a year and the Pojoaque Pueblo would be willing to put \$10 million of those dollars back into the sewage facilities, and therefore, instead of going for the 50 years, we could do that septic facility within 10 years.

As far as organized crime, which some of the States have said are infiltrating Indian gaming, there is no proof of that, as the U.S. Department of Justice testified in front of the Senate committee last year. In addition Mr. Hubert Humphrey, III, of Minnesota, the Attorney General, testified that there were no organized crime activities to the State legislature in Minnesota.

Again on criminal activity, the Pojoaque Pueblo have a stringent surveillance and security system. We do extensive background checks on all employees and have random drug testing. There is no organized or unorganized crime in gaming.

I was going to quote Ms. Mary Ann Antone of the Tohono O'odham Tribe, but I am sure she will say it later on, that the States are not afraid of organized crime. They are afraid of organized Indians. I think that is a great quote.

The polls in Minnesota, California, Arizona and Wisconsin show a majority of people support Indian gaming. You might know or not know, Mr. Chairman, that the legislature of New Mexico this year passed House Bill 41 that was intended to take the ability to compact with the States away from the Governor and give that authority to the Commission on Indian Affairs, another State agency. However, we are expecting Governor King to veto it.

We don't know why the Governor will veto it. He has not given us any good reason why he doesn't like gaming, why he doesn't want to approve any compacts other than that he doesn't like gaming. I personally have been criticized for openly disclosing the Pojoaque Pueblo plans to the news media.

We want the people of New Mexico to know that we are expansive and missionary, but yet moderate and reasonable. We want to develop a well-regulated and profitable, stable gaming enterprise that will assure independence for our people and benefit the people of northern New Mexico at the same time.

We will employ about 1,200 people starting at about \$6.00 an hour up to \$65,000 a year. Most of the employees come from the Pojoaque, Espanola and Santa Fe area.

Mr. RICHARDSON. Governor, I will have to ask you to summarize.

Mr. VIARRIAL. I would like to respectfully ask this committee to help us in continuing with our gaming, that we don't allow a moratorium to be passed on compacts. We have a tremendous amount of money invested in our gaming activities. If we are not allowed to have gaming, we will not be able to continue getting the money that we have come to depend on. Thank you very much Mr. Congressman.

Mr. RICHARDSON. Thank you very much.

[Prepared statement of Gov. Viarrial follows:]



Pueblo of Pojoaque

ROUTE 11, BOX 71
SANTA FE, NEW MEXICO 87501

ADMINISTRATIVE OFFICES
(505) 455-2278

TESTIMONY OF JACOB VIARRIAL GOVERNOR OF PUEBLO OF POJOAQUE, NM BEFORE THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

APRIL 2, 1993

GOVERNOR
Jacob Viarrial

LT GOVERNOR
George Rivera

SECRETARY
Linda Sarmiento

TREASURER
Gloria Garcia

My name is Jacob Viarrial and I am the Governor of the Pojoaque Pueblo in New Mexico. I want to thank you, Chairman, for this opportunity to present the views of my people at Pojoaque Pueblo to you.

We began limited gaming activities in 1991, when we initiated pull tab sales and limited bingo operations. In September of 1992, we began adding video machines.

Our attempts to negotiate a compact with Governor Bruce King have not been successful. Indeed, Governor King has flatly refused to negotiate in good faith with any of New Mexico's Indian tribes.

HEADSTART
455-3556

LIBRARY
455-7511

SENIOR CITIZEN
455-2240

TRIBAL COURT
455-2271

TRIBAL POLICE
455-2295

CHR PROGRAM
455-2278

We were encouraged to enter gaming by the example of other tribes which had opened casinos. We saw them create pensions for their elders, build day care and pre-school facilities, improve roads, banish unemployment and welfare dependency, open clinics, construct and rehabilitate housing, improve law enforcement staffing, strengthen tribal courts and other tribal institutions and acquire a more secure, stronger image of themselves as Indian people.

We also saw these tribes employ thousands of non-Indians, purchase millions of dollars in goods and services in nearby non-reservation communities, and vastly expand the tax base and public revenue stream for the local, state and federal governments.

At Pojoaque, although we are newcomers to gaming, we have spent and committed our profits to tribal programs and projects which would not have been possible otherwise. We have:

- * Funded pensions for our elders and a program for our youth.
- * Built a ceremonial Kiva and started funding for the Poeh Cultural Center and Museum, projects which are essential to revival of our once nearly extinct Tewa culture.

- * Expanded our police department budget by forty percent.
- * Underwritten twenty percent of our tribal government salaries and funded overhead expenses for tribal operations.
- * Provided significant financial contributions to the enterprises in our shopping plaza.
- * Subsidized improvements at our Pow-wow grounds in cooperation with the group that sponsors the Santa Fe Indian Market.
- * Assisted our members in the weatherization of their homes.

We have accomplished all this and funded our growth and expansion entirely from gaming profits, without outside assistance and without an outside management contract. Chairman, I can tell you that now that Pojoaque's people have held a vision of what gaming revenues can do for us in terms of financial independence, we will not sacrifice this potential. Gaming is the one and only opportunity we have had since the Spanish Entrada in 1540 to become a self-sufficient people again.

You will recall, Chairman, that you invited me five years ago to organize the Espanola/Pojoaque Valley Wastewater Steering Committee. You charged us with planning for wastewater treatment for the 500,000 acre drainage that spreads north from Tesuque above Santa Fe to Dixon, and from Los Alamos to Cordova. This area has a growing population of 60,000 people who live in five Indian pueblos and eleven villages and towns. The wastewater from this area has saturated the ground water and fouled the Rio Grande and other rivers. In perhaps ten years, there will be no clean water in these Valleys unless wastewater treatment systems are built.

To cure Mother Earth ---- indeed, to save her from this pollution, the Tribal Council of Pojoaque Pueblo has authorized me to commit \$10 million each year for ten years for the Espanola/Pojoaque wastewater treatment system provided we are allowed to proceed with our plans for a casino. That is money which neither the State of New Mexico nor the Federal government has available and which most of our neighboring municipalities and Indian tribes certainly don't have.

This commitment is part of our promise to our people to spend all of our gaming profits to benefit our tribal members and the larger regional community of which we are a part. It has always been the Indian way to share with other people.

The unwillingness of Governor Bruce King to negotiate in good faith with us and with other New Mexico tribes has frustrated our people. For whatever reason, Governor King won't even extend to the New Mexico tribes the opportunity for constructive dialogue on this issue. This is a politically dangerous situation. As

far as Pojoaque Pueblo is concerned, it will soon be time for drums and feathers in the political arena. We now realize that no longer are we powerless.

You need to know, Chairman, of the concessions Pojoaque Pueblo was willing to make in compact negotiations. We were willing to:

- * Allow the State of New Mexico to do background checks on our employees, contractors, consultants and suppliers, at our expense.
- * Allow the State to station an officer on our premises, at our expense.
- * Submit financial reports to the State and allow the State to audit our books at our expense.
- * Limit the number of video machines, set wager limits, set minimum payouts and submit our gaming machines for laboratory testing.

We have no idea how the State of New Mexico would have responded to those proposals, or what proposals the State might put on the table. This process has been like negotiating with dead people.

The governors of the states and their press agent allies from the Nevada Resort Association have repeatedly spread the Big Lie about the infiltration of Indian Gaming by organized crime. There has never been any evidence of such infiltration. This was attested to by a representative of the U.S. Department of Justice at hearings before the U.S. Senate Select Committee on Indian Affairs and in testimony by Hubert H. Humphrey, III, Minnesota's Attorney General, before that State's Legislature. At Pojoaque we have a tight security and surveillance system and we do extensive background checks on our employees and contractors as well as random drug tests.

It would be very hard for either organized or unorganized crime to infiltrate our operations.

Mary Ann Antone of the Tohono O'odham Tribe concluded discussion of this issue very well before Senator Inouye last month when she said, "Governors aren't afraid of organized crime, they're afraid of organized Indians."

Public opinion polls in Minnesota, California, Arizona and Wisconsin have indicated majority support in the electorate for Indian gaming.

To the extent that the New Mexico State Legislature reflects popular opinion, the passage this past month of a bill by large majorities to take the power to compact away from the Governor and vesting that power in the State Indian Affairs Commission indicates that New Mexicans want gaming compacts with the Tribes.

I have been critized, Chairman, for openly disclosing our plans. I have felt compelled to go public because the people of New Mexico need to know that our plans are expansive and visionary, yet moderate and reasonable. We want to develop a well regulated and profitable, stable gaming enterprise that will assure the independence of our people and benefit the people of Northern New Mexico at the same time.

As planned, our gaming operations would employ about 1,200 people at an average wage well above the minimum wage. Most of these people will come from the five Indian Pueblos in our area and from the large Hispanic population in the Espanola Valley.

Even though we have seen no movement in the compacting process, we are reluctant to see the Indian Gaming Regulatory Act opened to amendment. We fear, as do the compacted tribes, that the amendment process would loose a hoard of modern day Indian fighters who would have Congress destroy Indian gaming and the progress it represents. We look for wisdom in the courts and in the Congress to resolve this impass, and we look to political action at the State level to force decisions.

Chairman, thank you for this opportunity. You have always been welcome at our Pueblo, and my people look forward to seeing you among us again.

Mr. RICHARDSON. The Chair recognizes Chairperson Manzano.

STATEMENT OF NORMA MANZANO

Ms. MANZANO. Good afternoon. Mr. Chairman and members of the committee, my name is Norma Manzano. I am the chairperson for the San Manuel Band of Mission Indians in San Bernadino, California. Thank you for the opportunity to testify here today on an issue vital to my tribe as well as to tribes across the Nation. It is with awe, but some uncertainty, that I speak to you in a room where so many rules have been made. So my comments today are going to be about rules, specifically regarding an important resource to us, gaming, and in that context what your rules, our rules, and the State's rules have meant to my tribe.

Our people have always followed rules. At first, we had the rules of the earth, when my ancestors had to understand the laws of nature as they worked their hundreds of square miles of land and wildlife to feed their own.

And as a communal people, we had to understand the rules that families need to follow if they are going to work together to sustain a strong, protected and productive tribal nation. So our rules worked very well for us.

Then we were shown some new rules. Rules that told us how we had to live our lives as if our past meant nothing, and rules that promised that we would be respected and paid for what we were giving up to follow these new rules, only to learn the ultimate rule: That those who give the rules can, and in our case, frequently do, change the rules.

So the rules of others were used to make us victims. It was their rules that forced my own great grandparents off of their land and placed them in an area which they were told was reserved just for them. It was a one-square-mile area of rocky, steep, barren mountainside which has as its most important feature, an unpopular tourist attraction known as the San Andreas Fault.

And we were given more rules. We were told to give up what little we had in order to "assimilate" into a culture that neither wanted nor accepted us.

And we listened as even more rules were given to us, like when we were told our traditional form of government, which had outlasted European governments by the score, were not good enough, and had to be "reorganized."

Well, we did reorganize. We looked for ways to gather what few resources we were left with if we chose to keep our tribal government and way of life. And we discovered what the States already knew: That gaming, if properly controlled in an orderly atmosphere, was an acceptable and potentially profitable industry. It was a source of revenue that states, churches, schools and other respectable institutions had been utilizing for years. For us it mean more than money, however. Gaming, particularly when operated as entertainment facilities, provides labor-intensive enterprises that would offer us opportunities for jobs and training that simply were not available elsewhere. And we realized that if our governmental status was to be taken seriously, if we were truly sovereign, than we were as capable as any other government to fashion rules that met the needs of our tribal communities and people.

At San Manuel, we relied on those rules to create one of the largest bingo projects in the country. Our hall seats approximately 2,700 people and employs over 300. Prior to the time we began in 1986, there were no business opportunities on our reservation, and many of our families were dependent on federal relief for their support. Nevertheless, not many our community understood what we were doing when we began. The city and county acted as if they had heard of tribal sovereignty and fought us at every turn. They not only challenged our right to conduct gaming, but also our right to govern ourselves in general. It took the force of successful federal litigation to clear the way, but we had a lot to fight for. In the late 1800s, those of my tribe who were left after being wiped out by disease from Europeans were essentially chased by the State militia onto that one-square-mile hillside. But for a few acres of flat land at the base of the hill that were donated to the tribe at the turn of the century by local farmers, we would have no flat land today. Those who chose to remain and live among tribal members and retain their identity and tribal roots therefore had few options and virtually no remaining economic base upon which to build. Many of us grew up without running water, electricity, shoes and any sense that our children would have anything better to look forward to than we did. Indian gaming changed all of that.

But as the success of our gaming operation and those around the country grew, you told us that our rules and regulations did not count; that we were supposed to follow the rules of States which cared little if anything about our problems. Through our own use of everyone's rules, however, the United States Supreme Court in the *Cabazon* case was given the opportunity to restate what they—and we—had been saying since contact: Our own governmental rules, even in the gaming industry, do count, particularly when our reservations are in States which may say they disfavor gaming, but in reality promote it aggressively to meet many of their own needs.

As Indian gaming grew, additional rules were placed on our tribe in the form of the Indian Gaming Regulatory Act, IGRA. IGRA was called for by the States, not the tribes. Again, they insisted on rules to meet their needs, and you listened. With an Act of Congress, IGRA satisfied those States, and we followed those rules.

Now five years after the enactment of IGRA, tribes have achieved unheralded successes, despite a disgraceful campaign against us by opponents. We have abided by the rules imposed on us by the government. And where the rules have required the States to negotiate their role in our gaming fairly and evenly, we have demonstrated their failure to do so. We have used the very rules they asked for, and time and again we have shown their refusal to play by their own rules.

Some States simply started refusing us access in court under the Eleventh Amendment, despite the fact that a court remedy was our only alternative under IGRA if they failed to negotiate in good faith. Typical of this misuse is what is happening in California. Where we were able to convince the State to waive its Eleventh Amendment defense and simply submit our differences to a federal court, it gladly did so. It was no wonder. No sooner had we sent the matter to court under that agreement, than California claimed

they could not be sued under IGRA because of the Tenth Amendment. And so it goes on.

The States' use of these defenses have crippled if not decimated our ability to meet the original intent of IGRA, which is economic self-sufficiency for the tribes. But we are no longer surprised. Time after time we have honored treaties and restrictions imposed on us by the government, and time after time we have been deceived. So think about that when you consider the proposals now being made to you by States to change IGRA. They don't care about us, and we doubt they ever will. They will continue to change the rules until there is no point in having any. In gaming, we will simply be required to subject our tribal governments and citizens to a set of rules which were created as if our own government and people were transparent.

Well, we would hope you would not let that happen. And we would invite you to our reservation, which is doing no more than what our surrounding State government does for itself through gaming revenues. The State of California runs endless lotteries, promoted without shame despite overwhelming odds against winning. It allows the unlimited promotion of card casinos that each year provide hundreds of millions of dollars in revenue to private entrepreneurs. These are 200 table palaces in which high stakes are wagered every day, in a State that claims it has a public policy against casino gambling. Yet they would take gaming away from us, despite the real difference it has made in the lives of people no one seems to care about.

To illustrate the change gaming has made to our tribe, I need only point to current statistics. Before our gaming operation opened we experienced 80 percent unemployment. Today over 90 percent of the tribe is employed. My tribe paid over \$1 million in wages and has purchased over \$.5 million in supplies from our local community in the last year alone. We no longer have families receiving federal assistance and our tribe itself receives no federal funds and is entirely self-sustaining.

Mr. RICHARDSON. Madam Chairwoman, I will ask you to summarize please.

Ms. MANZANO. We would like for Mr. Levine to say a couple of words.

Mr. RICHARDSON. We will await that.

[Prepared statement of Norma Manzano follows:]

TESTIMONY

TO

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

of the

HOUSE COMMITTEE ON NATURAL RESOURCES

April 2, 1993

Submitted by: Norma Manzano

Tribal Chairperson: San Manuel Band of Mission Indians

Good Morning:

Mr. Chairman and members of the committee, my name is Norma Manzano and I am the Chairperson for the San Manuel Band of Mission Indians in San Bernardino, California. Thank you for the opportunity to testify here today on an issue vital to my tribe as well as to tribes across the nation. It is with awe, but some uncertainty, that I speak to you in a room where so many rules have been made. So my comments today are going to be about rules, specifically regarding an important resource to us, gaming, and in that context what your rules, our rules, and the state's rules have meant to my tribe.

Our people have always followed rules. At first, we had the rules of the Earth, when my ancestors had to understand the laws of nature as they worked their hundreds of square miles of land and wild-life to feed their own.

And as a communal people, we had to understand the rules that families need to follow if they are going to work together to sustain a strong, protected and productive tribal nation. And our rules worked very well for us.

Then we were shown some new rules. Rules that told us how we had to live our lives as if our past meant nothing, and rules that promised that we would be respected and compensated for what we were giving up to follow these new rules, only to learn the ultimate rule: that those who give the rules can, and in our case, frequently do, change the rules.

So the rules of others were used to make us victims. It was their rules that forced my own great grandparents off of their land and placed them in an area which they were told was reserved just for them. It was a one square mile area of rocky, steep, barren mountainside which has as its most important feature an unpopular tourist attraction known as the San Andreas Fault.

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was an acceptable and potentially profitable industry. It was a source of revenue that states, churches, schools and other respectable institutions had been utilizing for years. For us it meant more than money, however. Gaming, particularly when operated as entertainment facilities, provide labor intensive enterprises that would offer us opportunities for jobs and training that simply were not available elsewhere. And we realized that if our governmental status was to be taken seriously, if we were truly sovereign, than we were as capable as any other government to fashion rules that met the needs of our tribal communities and people.

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and live among tribal members and retain their identity and tribal roots therefore had few options and virtually no remaining economic base upon which to build. Many of us grew up without running water, electricity, shoes and any sense that our children would have anything better to look forward to than we did. Indian gaming changed all of that.

But as the success of our gaming operation, and those around the country grew, you told us that our rules and regulations did not count; that we were supposed to follow the rules of states which cared little if anything about our problems. Through our own use of everyone's rules, however, the United States Supreme Court in the Cabazon case was given the opportunity to restate what they -- and we -- had been saying since contact: our own governmental rules, even in the gaming industry, do count, particularly when our reservations are in states which may say they disfavor gaming, but in reality promote it aggressively to meet many of their own needs.

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Now five years after the enactment of IGRA, tribes have achieved unheralded successes, despite a disgraceful campaign against us by opponents. We have abided by the

rules imposed on us by the government. And where the rules have required the states to negotiate their role in our gaming fairly and evenly, we have demonstrated their failure to do so. We have used the very rules they asked for, and time and again we have shown their refusal to play by their own rules.

Some states simply started refusing us access in court under the 11th Amendment, despite the fact that a court remedy was our only alternative under IGRA if they failed to negotiate in good faith. Typical of this misuse is what is happening in California. Where we were able to convince the State to waive its 11th Amendment defense and simply submit our differences to a federal court, it gladly did so. It was no wonder. No sooner had we sent the matter to court under that agreement, than California claimed they could not be sued under IGRA because of the 10th amendment. And so it goes.

The states' use of these defenses have crippled if not decimated our ability to meet the original intent of IGRA, which is economic self-sufficiency for the tribes. But we are no longer surprised. Time after time we have honored treaties and restrictions imposed on us by the government, and time after time we have been deceived. So think about that when you consider the proposals now being made to you by states to change IGRA. They don't care about us, and we doubt they ever will. They will continue to change the rules until there is no point in having any. In gaming, we will simply be required to subject our tribal governments and citizens to a set of rules which were created as if our own government and people were transparent.

Well, we would hope you would not let that happen. And we would invite you to our reservation, which is doing no more than what our surrounding state government does for itself through gaming revenues. The state of California runs endless lotteries, promoted without shame despite overwhelming odds against winning. It allows the unlimited promotion of card casinos that each year provide hundreds of millions of dollars in revenue to private entrepreneurs. These are two hundred table palaces in which high stakes are wagered every day, in a state that claims it has a public policy against casino gambling. Yet they would take gaming away from us, despite the real difference it has made in the lives of people no one seems to care about.

To illustrate the change gaming has made to our tribe I need only point to current statistics. Before our gaming operation opened we experienced 80% unemployment. Today over 90% of the tribe is employed. My tribe paid over \$1 million in wages and has purchased over \$1/2 million in supplies from our local community in the last year alone. We no longer have families receiving federal assistance and our tribe itself receives no federal funds and is entirely self-sustaining. Tribal members who would never have had such opportunities are now filling responsible positions at our gaming facility, have learned accounting and management skills, and are prepared to work not only in the gaming industry but in other careers as well.

With our resources, we have been able to virtually guarantee complete health care for all members and their families. We are about to engage in a project which will expand our Indian Health Clinic to better serve our community without having to wait for the federal government to supply the funding. Indeed, through our health care insurance we are actually able to reimburse federal funds for Indian Health Services which are provided to our members. In education, we have a program that rewards achievement starting in the earliest grades. We guarantee higher education to the extent any of our tribal members or their families wish to pursue it. From having only one or two persons attending but never finishing college in the twenty year period preceding the Bingo hall, we now have six members enrolled in college this year, and have regularly had one or two who are on the Dean's list. In short, those opportunities for self-esteem have been opened to us through gaming and we are seizing that opportunity.

No one can question the success of Indian gaming as an economic tool for self-sufficiency. What has come into question is the role the states will play in the relationship between tribes and the United States government. Will the original intent of IGRA be maintained, or will this be just another broken treaty? More rules to suit the rulemaker.

It appears, at least from our perspective, that this is only the beginning of a major effort to once again limit the very economic base on which we stand.

In closing, I ask you to please remember when you hear the success stories accomplished through gaming, that just a few short years ago my Tribe existed in below third-world conditions. Conditions that no one off a reservation would tolerate. Today I am proud to say we have changed all that. My children and their children now can believe that going to school is within their grasp. So as you listen to the attacks on us by opponents calling for a level playing field, keep in mind the original intent of IGRA, and don't forget the tribes across this nation who have a brighter future because of the opportunities provided by gaming.

Mr. Chairman thank you for the opportunity to share my experience with you. We look to Congress for guidance in this issue, and it is with great hope that we look for a solution to the problems facing the tribes today.

STATEMENT OF DANIEL TUCKER AND GEORGE FORMAN, ESQ.

Mr. RICHARDSON. Let me recognize Chairman Tucker.

Mr. TUCKER. Thank you, Mr. Chairman. I am the chairperson of the Sycuan Band of Mission Indians and I am here with our legal counsel, George Forman, of the law firm of Alexander and Kirschner.

On behalf of the Band, I would like to thank the committee for the opportunity to appear today. In addition to the prepared statement that I have submitted, I would like to submit for the committee's files a packet of exhibits regarding Sycuan Band's law enforcement capabilities.

[Editor's note.—The exhibits may be found in the official hearing record.]

Mr. FORMAN. Two years ago our tribe could not afford to even come here. Our reservation has no natural resources or usable lands. We had no money to run a tribal government and very few of our members had jobs. The housing in the reservation was incredibly bad. The reservation had no paid phones and we could not produce enough drinking water to fill household needs.

Crime was a serious problem because non-Indians could not come on the reservation without worrying about being bothered by the county sheriff's deputies. Our children could not get a decent education. Our access to quality health-care was very limited. We had almost no fire or police protection. If someone in the reservation had a medical emergency, they were out of luck.

Our reservation is a much different place today. Our members live in nice houses. Every tribal member who wants to work has a meaningful and well-paid job. The tribal government has the money to provide a capable staff to provide the information it needs to make informed decisions. The tribe provides a broad range of services to tribal members and other people on the reservation and in the community, including 24-hour police protection, 24-hour fire and ambulance services trained by professionals on call in the surrounding areas, a medical and dental clinic offering a broad range of health-care services to tribal members, employees, and people from surrounding communities, cultural and education programs, a library, child care and other services and programs.

The tribal members are moving back to the reservation thus preserving the tribal community, culture and tradition. In short, the Sycuan Reservation does not fit the negative stereotype that many people have heard about reservations. Instead it is a very nice place to live and the band did all this without money from the Federal Government or anyone else.

The Band did it with revenues from its tribal gaming enterprise. The Sycuan Gaming Center is an important economic resource, not just for the Band, but for the entire area. Our annual payroll is about \$10 million. We buy about \$12 million a year in goods and services from local vendors. We employ 800 people in well-paying jobs. In fact, only 57 Indians work here and the rest are non-Indians.

Our members and employees spend millions of dollars in surrounding communities. Our members pay federal income taxes on their earnings. Our non-Indian employees pay both federal and state income taxes. And our customers pay taxes on their winnings.

Even before IGRA, we did not sit back and collect a check from a management company. As our business grew, we targeted our regulatory scheme where we barred a management company, who violated our laws, from the reservation. Gaming in California is extremely competitive. In San Diego County there are non-Indian card rooms, many so-called charity bingos, a large State-owned racetrack with a simulcast facility, dog racing, and just across the border in Mexico and everywhere you can play various games offered by the California lottery. There are also several other Indian gaming facilities fairly close by Sycuan.

To survive in that environment, we must continue to expand and innovate in response to market demands. We have improved our original bingo hall and enlarged and improved our card room. We have built a first-class simulcast wagering facility and built a full-service restaurant.

To build our simulcast facility, we had to negotiate a class III compact with the State. We spent 15 months negotiating our simulcast compact. The State had great difficulty accepting that the Band had any governmental capabilities. In the first six months of the simulcast operation, the State spent about \$8,000 in regulatory expenses and collected license fees of about \$440,000. The Band received \$318,000 for the same period.

For the past year, a group of California tribes have been jointly negotiating with the State about the basic terms of class III compacts that would authorize the regulated forms of class III gaming. The State claims to be willing to agree with the compacts. But exactly what the State currently offers is an unauthorized offer through its lottery.

But that is even subject to conditions that are extremely intrusive and burdensome registration of the requirements. The State is intent upon depriving tribes of the benefits of expansion even while the State innovates and expands its own games.

The State is unwilling to treat tribes as capable, responsible governments. Before the Class III compact negotiations began, California Attorney General Lungren urged local law enforcements to raid reservations for violation of the law. We tried to have an open dialogue with the State. The State response came three weeks later when 85 sheriff's deputies invaded Sycuan facility. A Federal District Court in San Diego declared the raid illegal.

The States have never given IGRA a chance to work. They have stonewalled the contract negotiations. When tribes have gone to court, the States have attacked the judicial remedies provided in the statutes. Without any real causes or concern about the success of tribal gaming, and without offering the tribe any substitute for the especially needed revenue that tribal gaming provides, the States are intent on seeing that IGRA goals never will be achieved.

There was a reference before by States to a level playing field. The States don't even want us in the ballpark because as long as the States can offer the lotteries and the other games statewide and we are confined to our remote reservations, we will effectively be behind a locked gate.

Thank you for your attention. I will be happy to answer any questions the committee may have.

Mr. RICHARDSON. Thank you.

[Prepared statement of Mr. Tucker follows:]

STATEMENT OF DANIEL J. TUCKER, CHAIRPERSON OF THE SYCUAN BAND OF
MISSION INDIANS, SAN DIEGO, CALIFORNIA, BEFORE THE NATIVE AMERICAN
AFFAIRS SUBCOMMITTEE OF THE HOUSE NATURAL RESOURCES COMMITTEE

APRIL 2, 1993

Chairman Richardson, and members of the Committee:

I am the duly elected Chairperson of the Sycuan Band of Mission Indians. I am here today with the Band's legal counsel, George Forman, of the law firm of Alexander & Karshmer. On behalf of the Band, I would like to thank the Committee for the opportunity to appear here today at this oversight hearing and share with the Committee the Sycuan Band's experiences with the economic advantages that gaming has brought us and surrounding communities, our experience with self-regulation of gaming, and our views about proposals to limit Tribal Class III gaming.

To better understand the Band's position on gaming, it is helpful to know something of our Reservation's history. The Sycuan Reservation was established by a Presidential Executive Order dated December 27, 1875, and the trust patent for the Reservation was issued under the Mission Indian Relief Act on February 18, 1892. The Reservation consists of 640 acres of land in southeastern San Diego County, California, outside the City of El Cajon. Approximately 93 people live on the Reservation. The Band is listed in the Federal Register as a Tribal entity with which the United States maintains government-to-government relations. The Band is organized under Articles approved by the Secretary of the Interior.

The history of California Reservations is very different from Reservations in other parts of the country. In California, the President sent treaty commissioners out from Washington to negotiate treaties with the California Tribes after California already had been admitted to the Union, and after the Gold Rush had lured huge numbers of non-Indians to the State. The eighteen treaties that were negotiated with California Tribes never were ratified by the Senate, the Reservations that were to have been established by those treaties never were created, and non-Indians quickly occupied any Indian lands that had any value -- often after Indians had improved them. The Indian population of California plummeted due to starvation, disease, or outright slaughter.

The plight of what became known as the Mission Indians was the subject of continuing public debate, culminating with the establishment of a commission to study and propose recommendations for the relief of those Indians. Based on the Smiley Commission's recommendations, Congress passed the Mission Indian Relief Act; however, the Reservations that actually were established fell far short of providing the relief to which the Smiley Commission believed the Mission Indians were entitled, because much of the usable land in Southern California already had been taken up by non-Indians.

The Sycuan Reservation is fairly typical of Reservations established in Southern California. Until the area surrounding the City of El Cajon began a period of rapid growth about ten years ago, the area in which the Reservation is located was rural and quite isolated. There were virtually no businesses or other places of employment near the Reservation, and even the agricultural activity in the area was scattered and small-scale.

The Sycuan Reservation does not have any natural resources such as mineral deposits, timber, or even very fertile soil that can be exploited or developed by the Band or its members to generate income or employment. Much of the Reservation consists of brush-covered hillsides that are not suited to any agricultural or commercial activity, and the Reservation did not have a water system capable of supplying enough potable water to meet even basic needs.

Of the Reservation's 640 acres, 260.46 acres have been allotted to individuals, and are held in trust for them by the United States. The remaining 379.54 acres are held in trust for the Band by the United States. Only about 340 acres are suitable for any form of development or other feasible beneficial use. Of those lands, only a small portion would be suitable for commercial development. The remainder of the Reservation's Tribal lands on which commercial development is not economically feasible have been reserved for the future housing needs of Tribal members. If those lands are not reserved for future residential use, there would be no way to accommodate future generations of Tribal members on the Reservation.

For much of the Reservation's history, the people of the Reservation have endured a standard of living far below their non-Indian neighbors. There was almost no gainful employment on the Reservation. Much of the Reservation's housing stock was poorly constructed decades earlier, and long ago had become seriously deficient. Sanitation conditions were grossly substandard, and the lack of a reliable supply of potable water was a constant problem. There were no paved roads, only dirt roads and paths. Because of a lack of employment and housing on the Reservation, living on the Reservation meant continuing hardship, dependency and deprivation. As a result, the Band faced the very real prospect that the Reservation community would disintegrate as elders passed away and younger members moved away from the Reservation to seek better lives elsewhere.

Before the Band established its gaming enterprise in 1983, the Band had no way to generate revenues with which to operate its government or provide any basic services to Tribal members and other Reservation residents. The few federal services that were available tended to be inadequately funded or inconsistently provided, and San Diego County provided virtually no services on the Reservation. As a result, the Reservation had almost none of the governmental services and amenities that routinely are available in non-Indian communities.

The Band decided that establishing a high-stakes bingo enterprise

would be the best -- if not the only -- way to raise the funds needed to run its government and serve its members, and also to provide decent jobs for its members and their families. However, the Band had no financial resources to start such a business, and no financial institution would loan the money directly to the Band. Neither the BIA nor any other federal agency was able to offer guidance or assistance.

Therefore, the Band entered into an agreement with a non-Indian management company to provide the necessary financing, as well as management expertise. As was common at the time, especially given the uncertain legal status of Indian gaming, the management agreement was less favorable to the Band than it would have liked. Nonetheless, at that point, even a bad deal seemed preferable to no deal at all, and the agreement was not as unfavorable as some of the agreements that other Tribes had signed.

The Sycuan Band's bingo facility was built in the fall of 1983 at a cost to the Band of about \$1,000,000. The Band repaid the costs of construction and startup in full, and was able to provide employment for many Tribal members and begin providing a variety of governmental services to its members. However, the Band's enterprise faced competition from other Indian Bingo enterprises in San Diego and Riverside Counties, and also non-Indian gaming establishments and forms of gaming, including cardrooms in surrounding cities and, beginning in 1984, the California State Lottery. To diversify in order to meet increasing competition, in 1987 the Band established a small cardroom, offering patrons the opportunity to play card games played elsewhere in California.

The Band was not a passive spectator to its own business. The Band raised questions about management expenses, proper accounting for receipts, expenditures and disbursements, security, employment practices, provision of accurate information about operations, lack of respect for Tribal members officials, and other issues. To deal with these problems, the Band sought legal counsel and substantially amended its Bingo Ordinance so as to assert greater control over the business, as well as those who operated or worked in it. Under the amended ordinance, the gaming management company was required to obtain a Tribal license, and all employees were required to obtain Tribal work permits. Administration of the ordinance was to be funded by the assessment of application and license fees on those subject to the ordinance.

The gaming manager objected to the tightening of the Band's ordinance, claiming that it violated the management agreement. The manager defied the ordinance and sued the Band to invalidate and enjoin enforcement of the ordinance. The Band won the lawsuit. Pan American Co. v. Sycuan Band of Mission Indians, 884 F.2d 416 (9th Cir. 1989).

During the lawsuit, the Band allowed the manager to obtain a license by paying the license fee into court. After the Band won the suit, the manager continued to violate the ordinance; after giving the manager notice and an opportunity to be heard, the Band revoked the

manager's license and barred the manager from the Reservation. This was accomplished without any assistance from the BIA or any other outside agency. That management company, the Pan American Company, has no doubts about the Band's ability or will to control gaming on its Reservation.

The Band ran its enterprise by itself for the next year (until the Band once again needed financing for expansion). During that time, the Band corrected the problems that had arisen under the former management company. The Band put into place a system of security and controls that became a model for the industry.

Using gaming revenues, the Band established a Department of Public Safety that provides 24-hour police services with POST-certified officers, fire protection with a Tribal fire department staffed by trained firefighters, and ambulance service with trained emergency medical technicians. The Band eventually developed an Intertribal fire fighting consortium. The Band also established its own medical clinic (without substantial financial assistance from the Indian Health Service), and a health insurance plan for all staff, both Indian and non-Indian.

The Tribal police are accountable to the Tribal government, and are responsible for security at the gaming facility, so that gaming management has no control over security personnel. The creation and operation of this Department has virtually eliminated crime on the Reservation. The Tribal fire department, ambulance service and medical clinic provide the entire Reservation community with an unequalled level of fire protection and medical service. The clinic also serves gaming center employees and members of the surrounding non-Indian community.

With an authorized strength of 27 officers, the Tribal police have a total of more than 300 years of law enforcement experience. Its officers are graduates of various police academies, and have served with various municipal and County law enforcement agencies. Of the 27 POST-certified officers, 13 possess intermediate certificates, eight possess advanced certificates, and two are certified as supervisors. Attached to the Band's testimony are thirteen packets illustrating the training, policies and procedures of the Tribal police, as well as explanatory materials and freeze-frame photographs made from videotapes of actual attempts at cheating by card players (Packet No. 12).

The Tribal police have been extremely effective in protecting the Gaming Center, its employees and patrons from cheating, theft and other forms of criminal activity. The Department conducts thorough background investigations, including drug and alcohol testing, on applicants for employment at the Sycuan Gaming Center. The Department also has agreements with other Tribes to perform investigations for their gaming employees. The Department has performed more than 1400 such investigations.

Through effective surveillance, using both personal observation and a sophisticated system of video surveillance, persons of known criminal reputation are quickly identified and removed from the Reservation. Suspicious activities are investigated and resolved. The Tribal police have been able to detect and refer for prosecution persons who have attempted to cheat other players, as well as persons who have attempted to steal from or defraud the Band's gaming facility. The Public Safety Department provides the entire Reservation with a level of protection and security unequalled in San Diego County.

To anyone who has followed the evolution of gaming in Indian country, these proposals are nothing new. The states have been making the same arguments today as they have been making, in one form or another, for the past ten years. Those arguments are no more valid today than when they were first made, or when they were made in opposition to IGRA, and with the adoption of each new regulation by the National Indian Gaming Commission, whatever veneer of validity those arguments once may have had simply disappears.

What may be the most compelling refutation of the State's claims about the evils of Indian gaming is that despite the prolonged delay in the startup of the National Indian Gaming Commission, the Indian gaming industry has remained remarkably free of the kinds of dire problems that its most vociferous State critics had predicted. Now that the NIGC is reasonably close to beginning to perform its regulatory functions, there is even less reason to believe that those problems ever will occur on any substantial basis.

Have there been problems in the Indian gaming industry? Without a doubt, there have been isolated instances of individuals -- and sometimes even Tribes -- acting less responsibly than either Congress or the other Tribes would have liked. But the misconduct of a very few hardly justifies punishing the many who have done their best to conform to the requirements of IGRA in the absence of definitive interpretation and guidance from the NIGC, any more than widespread price-gouging and other misconduct by defense contractors would warrant wholesale nationalization of the defense industry.

The Congress that enacted IGRA recognized that the Act's establishment of the Tribal-State compact process for authorizing and regulating Class III gaming was a delicate and historic compromise, in which States were granted the opportunity, if they so desired and bargained in good faith -- not mandated -- to exercise unprecedented jurisdiction in Indian country in exchange for Tribal rights to engage in Class III gaming not prohibited by a State as a matter of public policy. Thus, IGRA protects State concerns about Class III gaming in two ways: 1) Tribes cannot engage in Class III gaming if the gaming is prohibited as a matter of State public policy; and 2) the State is free to bargain in good faith with the Tribes about the extent of State criminal and regulatory jurisdiction over gaming necessary to protect legitimate State interests and concerns about protecting its citizens from dishonest gaming and infiltration by criminal elements.

Congress did not act in a historical vacuum. The debates and legislative history show that Congress was acutely aware of State resistance to Tribal economic initiatives and self-government, and of the inclination of States to protect State and non-Indian interests at Tribal expense. To protect the Tribes against unreasonable State obstructionism, IGRA provides the Tribes with a limited federal judicial remedy to challenge a State's refusal to negotiate or to negotiate in good faith for a Class III compact, and places final authority to deal with State intransigence in the hands of the federal trustee.

To date, five California Tribes have reached agreement with the State of California on Class III compacts: the Cabazon, Sycuan, Viejas, Barona and San Manuel Bands in San Diego, Riverside and San Bernardino Counties. Negotiating the first two simulcast compacts posed a major challenge. The horse racing industry already is, and long has been, closely regulated by the State, and integration of Tribal facilities into the State-authorized and supervised electronic wagering network enabled the State to insist upon Tribal agreement to operation under virtually the same rules and regulations as non-Indian facilities.

In financial terms, this meant that the Tribes would be limited to receiving the same commission (2% of gross handle) as all other simulcast facilities, plus the .33% that otherwise would be paid to the local government for providing municipal services to the facility. This also meant that the State insisted upon collecting a tax of between 1.5% and 4% on the gross handle at the facility, such that in the first six months of operation, the State received \$440,000 in license fees, as against regulatory expenses of less than \$10,000; during the same period, the Band received a total of \$318,000, making the State -- not the Tribe -- the principal beneficiary of the gaming activity.

The Band entered the simulcast compact negotiations believing that negotiation involves give and take by both sides. We were wrong; negotiations with the State involving the Tribe's giving, the State's taking, and then the State's demanding even more, knowing full well that the Tribe had no bargaining leverage if it could not obtain signals from State-licensed facilities, and that the Tribe's only remedy would be years of costly litigation.

Even though the Sycuan Band had established its own fire department, ambulance service and a well-trained, largely State-certified law enforcement department, the State had absolutely no confidence in the Band's ability and commitment to perform even the most basic of governmental services to the gaming facility and its patrons -- and this was for an existing and functioning facility, in a system in which the actual acceptance of wagers and handling and accounting for funds is not done by the Tribe or Tribal employees, but by an organization of race tracks, fairs and horse owners, all of which is closely supervised and licensed by the California Horse Racing

Board. It took 15 months of negotiation for the Sycuan Band to persuade the State to agree to give initial responsibility for fire safety inspections to the Tribe (subject to State approval), and to the possibility that the Tribal facility could give hiring preference to Tribal members.

Operation of the Sycuan simulcast facility has not caused any problems whatsoever for the State, other than that the State fair in southern California has had some competition for customers. The State has received millions of dollars in license fees from Sycuan, the horseracing industry has received millions of dollars in revenues, non-Indian parimutuel employees have received millions of dollars in salaries, and tens of thousands of horseplayers have had enjoyable experiences at the Sycuan facility. Meanwhile, the Band has been operating -- and regulating -- a large and sophisticated gaming enterprise for ten years. In its own way, the Band has had nearly as much gaming regulatory experience as the State. The Band has enacted and enforced extensive ordinances to authorize and regulate the establishment and operation of its gaming activities, including its Bingo, cardroom and simulcast wagering enterprises. In addition to regulating those activities, those Ordinances require that all persons employed on the Reservation obtain and carry on their persons Tribal work permits. The Band strictly enforces its gaming ordinances and regulations to ensure both the legality and honesty of gaming activity and the health, safety and comfort of all persons in the facility.

As an example of the Band's self-regulatory ability even before IGRA, when its original management company refused to obey the Band's amended gaming ordinance by obtaining a Tribal license, the Band successfully barred the manager from the Reservation, terminated the management contract and assumed full and direct control of the operation. Only when the Band's need for expansion capital exceeded its resources did the Band retain the services of a new management company.

Rather than resolving the legality of the State license fee in the simulcast compacts, the State has agreed that the Tribe may sue in district court for declaratory relief. Both the Cabazon and Sycuan Bands filed lawsuits in which the district court ruled in favor of the State on the grounds that the tax is not on the Tribes and is not preempted by IGRA. Those cases now are on appeal to the Ninth Circuit, where they have been briefed but not yet argued.

The horseracing industry brings the State of California hundreds of millions -- sometimes more than a billion -- dollars of revenue each year. To protect that income stream, the State has established a comprehensive and pervasive system of regulation, consisting of a statutory framework and detailed regulations promulgated and enforced by the California Horseracing Board.

Although California either expressly authorizes or does not

prohibit a broad spectrum of gaming activity, California does not have either a statewide system of regulating or prohibiting other forms of gaming, or a regulatory body charged with that responsibility. By statute (Gov't. Code §8880.2), the California Lottery is exempt from virtually all restrictive State gaming laws, including Calif. Pen. Code §330's purported prohibition of specific card games and banking and percentage games played with cards, dice or any other device, and Pen. Code §330a's restrictions on slot machines (Pen. Code §330c includes "punchboards" within the definition of "slot machine"). The State Lottery is overseen by the State Lottery Commission; *i.e.*, it oversees itself. The State Lottery offers a variety of games, including Lotto, a computerized, on-line Keno game and scratchers (*i.e.*, pulltabs or punchboards). Until last week, the State Lottery operated its games on Indian lands of the Agua Caliente Reservation without a Tribal-State compact.

Other than Pen. Code §330's proscription of specific card games, California does not prohibit gambling with cards. Instead, local governments are free to restrict or allow gambling at card games not proscribed by that Section. The State's only role is to register the operators and employees of card rooms through the office of the Attorney General.

Based upon the breadth of gaming activity either expressly authorized or allowed under California law, and the magnitude of the State's financial interest in the promotion of gaming, the Supreme Court, in California v. Cabazon, held that California regulates gambling in general; *i.e.*, that gambling is regulated, rather than prohibited, and is not against the State's public policy. The district court in Lac du Flambeau v. Wisconsin adopted that same reasoning in ruling that the State of Wisconsin could not use State public policy as the basis for refusing to negotiate a broad Class III compact. In Sycuan Band of Mission Indians v. Roache, No. 91-1648H (S.D. Calif. 1992, Order Granting Plaintiff's Motion for Partial Summary Judgment, February 28, 1992), the district court for the Southern District of California reached the same conclusion; specifically, Judge Huff held that California law regulates, rather than prohibits, slot machines. On March 5, 1993, Judge Burrell, of the Eastern District of California in Sacramento, held a hearing on cross-motions for summary judgment in Rumsey Rancheria, et al. v. Wilson, during which he announced his tentative ruling that California's public policy is to regulate, rather than prohibit banking and percentage games or various forms of electronic/video lottery-type games, and thus that California cannot base a refusal to agree to the inclusion of such games in a compact upon a public policy against the operation of undefined casinos of the kind currently operated in Nevada and New Jersey.¹

¹ Judge Burrell's tentative ruling also rejected California's Tenth Amendment attack on the constitutionality of IGRA, on the ground that IGRA merely gives the State an opportunity to regulate what otherwise would be beyond its jurisdiction, but does not compel the State to do anything or

Thus, when the Sycuan Band, together with fifteen other Tribes, requested Governor Wilson to negotiate a compact authorizing and regulating all forms of Class III gaming allowable under IGRA, California could not legitimately claim that Tribes would have to conform to an existing State system in order to be integrated into that system and benefit from it. This should have made the process of negotiating such a compact simpler and faster. It didn't.

As difficult as the process of negotiating a simulcast compact may have been, the Band's experience with the State in reaching agreement on a compact that would authorize other forms of Class III gaming has been much worse.

Before negotiations actually began, the Band received a copy of an October 8, 1991 memorandum issued by California Attorney General Lungren in which the Attorney General asserted that California has jurisdiction to enforce its gaming laws on Indian lands, and urged local authorities to enforce those laws by seizing gaming devices which might be Class III and arresting those responsible. That memorandum made no reference to 18 U.S.C. §1166(d), or to the various federal court decisions which have held that IGRA precludes even P.L. 280 states from enforcing their gaming laws on Indian lands in the absence of Tribal consent.

Through its legal counsel, the Band attempted to engage in a dialogue with the State concerning the question of State jurisdiction after IGRA. Mr. Lungren never even acknowledged receipt of the Band's request to discuss the matter.

At the same time, the Band attempted to open a dialogue with San Diego County law enforcement authorities. We even invited Sheriff Roache to come to the Gaming Center, inspect the Band's equipment and discuss not only the legality of the equipment, but also how any dispute on the question might be resolved with the least amount of confrontation, expense and delay. The Sheriff's office's written response to this invitation was to express an interest in keeping lines of communication open on this issue, but the next official response the Band got from the County was an armed invasion three weeks later. The Sheriff's deputies were accompanied by agents of the Nevada Gaming Control Board.

Eventually, the Band won a permanent injunction in the U.S. District Court in San Diego against the County's enforcement of State gaming laws on the Reservation in the absence of a Compact. However, the District Attorney has appealed that decision to the Ninth Circuit.

The County's invasion of the Reservation to enforce State gaming

impose any burdens upon the State. By stipulation, California agreed not to assert the Eleventh Amendment, in exchange for the Tribes limiting the scope of gaming as to which declaratory relief was sought.

laws not only was extremely costly to the Band, but also constituted a gross and disrespectful violation of the Band's rights as a sovereign Tribal government. Only the Band's self-restraint prevented a violent confrontation.

As recognized by its authors, IGRA represents a difficult compromise among State, Tribal and federal interests. Given the degree of State intrusion which Tribes may have to accept in order to engage in Class III gaming which is not otherwise contrary to State public policy, IGRA's ambiguities and the possibility that the limited remedies which IGRA created to protect against State intransigence might prove to be entirely illusory, Tribes have many reasons not to be entirely satisfied with the compromises which were struck. If the States had upheld their end of the bargain, Tribes might not feel so betrayed today.

Throughout our compact negotiations, the State has proven incapable or unwilling to acknowledge that Tribes are governments that may have as much or more knowledge, ability and experience in the regulation of Class III gaming as does the State. The State consistently has attempted to impose limitations and restrictions that have nothing to do with the legitimate regulation of Class III gaming, but have everything to do with protecting the State's own gaming activities from fair competition. We have been negotiating with the State for more than a year, and we are only slightly closer to completing the regulatory framework for Class III gaming than when the negotiations began.

However, we are nowhere near reaching agreement on the scope of gaming to be conducted under the compact, and that is what the State is using as its ace in the hole. California Tribes have sued California to obtain a judicial declaration of the scope of gaming permitted under the State's public policy. Although California agreed not to raise the Eleventh Amendment as a defense, in exchange for the Tribes' agreement to limit the scope of gaming as to which a declaration was sought, the State has raised the Tenth Amendment, and undoubtedly will appeal from the judgment that the district court tentatively announced it was preparing to enter in the Tribes' favor.

As several Senators noted in the debates on IGRA, the States did not really want a level playing field, and they do not want one now. Do not be misled by the State's argument that a level playing field requires that Tribes be limited to exactly the same games as the States themselves offer or expressly authorize. When the States can offer their games everywhere, and Tribes are limited to offering smaller versions of those games only on their remote Reservations, the playing field might look level, but the fact is that Tribes are not even allowed into the stadium.

There is only one rational explanation for the State's position: money. There is no evidence of any significant degree of criminality associated with existing Tribal gaming, that expanding to Class III

gaming would increase criminal activities, or that Tribal Class III gaming could not be fully and adequately regulated and controlled at no unreimbursed expense. In fact, California is not threatened by Indian gaming at all. The biggest single "victim" of expanded Indian gaming in California will be the gambling interests in Nevada who have donated tens of thousands of dollars to the campaigns of top California politicians, Attorney General Lungren among them, when Californians can go to nearby reservations rather than having to travel to Nevada to participate in the gaming activities they obviously enjoy.

The governmental infrastructure which the Band has created and financed to support and regulate its Gaming Center has had tremendous positive effects upon the Reservation as a whole. The same Tribal Public Safety Department which is funded by and protects the Gaming Center also protects the entire Reservation community, with the result that especially since 1987, there has been a marked decrease in crime on the Reservation, and Reservation residents receive police, fire, ambulance, medical and other governmental services which are at least equal to, and in many cases better than those which are provided to non-Indian communities elsewhere in California.

The Band's gaming enterprise also has had a profound economic impact upon surrounding non-Indian communities. The Band employs nearly 1,000 people, making it one of the largest non-military employers in San Diego County, outside of immediate San Diego metropolitan area. The Band also purchases millions of dollars of goods and services from vendors in the surrounding area each year.

At a time when non-Indian communities are pleading with the Congress not to close military bases, when the Administration is looking for ways to create jobs and use scarce federal dollars to stimulate the economy, when every program in the federal budget is being scrutinized in the interest of deficit reduction, we think it is both outrageous and ridiculous to seriously consider killing or restricting the single most effective economic development program in the history of Indian country -- and one that has worked with almost no cost to the federal government.

The Field Polling Research Study recently conducted a survey of Californians' attitudes toward Indian and non-gaming in California. In that poll, more than 80% of the respondents said that they preferred expansion of Reservation gaming, rather than expansion of State-sponsored gaming. Meanwhile, thousands of Californians demonstrate their support of Tribal gaming by their patronage.

The way it looks from the Band's perspective is that the State doesn't seem to have any problem with the idea of poor Indians, but it seems to have a big problem with Indians who have enough money to be self-sufficient.

If there are problems that need to be addressed, let's identify and address those problems in an atmosphere of mutual respect. Let's

not be stampeded into killing an entire industry. When the savings and loan industry turned out to be full of corruption, Congress didn't close it down, it appropriated billions of dollars to bail it out. We're not asking for a bailout; we're just asking for the chance to continue doing what we have learned how to do, and to work out our differences with the State in an atmosphere of mutual respect.

The States' demand for limitations on Tribal gaming remind the Band of critics of President Clinton's proposals to reduce the federal deficit and stimulate the economy: they are long on criticism, but completely short on alternatives. What are the States prepared to offer the Tribes to offset the lost jobs and reduced revenues that would result from the proposed limitations? Our guess is, nothing, and that simply is not acceptable.

If Congress gives in to the States on this issue, the States never will have any incentive to deal fairly with Tribes, or to deal with them on a government-to-government basis. If the States can turn to Congress for relief every time Tribes win in court, then Tribal rights and sovereignty will lose all meaning.

Please don't let it happen.

STATEMENT OF KEVIN GOVER, ESQ.

Mr. RICHARDSON. The Chair recognizes Mr. Kevin Gover, who will be testifying on behalf of the Pueblo Tesuque of Santa Fe, New Mexico, and a very trusted and close friend of mine.

Mr. GOVER. Thank you, Mr. Chairman. I noticed that the only people who were not listed as honorable on this panel were the lawyers. Governor Charles Dornan sends his regrets and thanks for giving us the opportunity to testify today. I want to make a couple of quick points so the Chair can move on to asking questions of this panel.

First, it has to be remembered that in 1987 the law was the *Cabazon* case. Under that case, we had the opportunity to conduct class III gaming on the reservations without any involvement from the States, if the State in fact regulated that sort of class III gaming. If the gaming was allowed in the State and not flatly prohibited, then the tribes could conduct it without any interference from the States.

The 1988 Gaming Act changed that. In our judgment and in the judgment of most of the tribes, the tribes lost ground in 1988. We lost rights that we had before, specifically the right to conduct class III gaming without any State involvement.

We are a little concerned to see a number of proposals to amend the Indian Gaming Regulatory Act primarily because, as the chairman from Sycuan was saying, it just has not been given an opportunity to work. It has not been given an opportunity to work by the Federal Government. The Indian Gaming Regulatory Commission has not gotten itself organized and done the things it was required by law to do, and it has not worked because a number of States have simply refused to negotiate in good faith. That is the most regrettable aspect of all this.

As Governor Viarrial pointed out, in New Mexico there were a long series of negotiations between the tribes and the Attorney General. The Attorney General interpreted New Mexico law to allow certain types of gaming and therefore negotiated compacts with two of the tribes that would allow for certain types of video machines to be used on the reservations. When the time came for the Governor to sign those compacts, he refused. Worse yet, at that point he refused to negotiate at all with any of the other tribes in the States who wanted to negotiate for the conduct of this sort of gaming.

By any definition, a flat refusal to negotiate is not negotiation in good faith. The matter is now in litigation. It is very rare for my law firm to prefer litigation over legislation, but in this particular case, we do prefer to go ahead and litigate this out, allow the courts to make the final determinations as to whether there is Tenth and Eleventh Amendment immunity, as to what is the precise nature of class III gaming, what games are class III and what are not, and do it that way rather than go back through Congress.

The reason is simply in 1988 we lost ground and we are very concerned that if we do it again in 1993, we will lose ground again.

Thank you Mr. Chairman.

Mr. RICHARDSON. I thank my good friend.

[Prepared statement of Mr. Gover follows.]

TESTIMONY OF KEVIN GOVER
GOVER, STETSON & WILLIAMS, P.C., ALBUQUERQUE, NEW MEXICO
ON BEHALF OF THE PUEBLO OF TESUQUE
BEFORE THE COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 2, 1993

Mr. Chairman, my name is Kevin Gover, and I am a partner of the law firm of Gover, Stetson & Williams, P.C. in Albuquerque, New Mexico. I am testifying today on behalf of the Pueblo of Tesuque, which is located approximately five miles north of Santa Fe, New Mexico. I wish to speak about the positive effect Indian gaming has had on Tesuque's economy and to voice Tesuque's opposition to any efforts to amend the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"), to limit Indian gaming any more than the Act already does.

Tesuque Pueblo has about 200 tribal members and has been operating a gaming establishment on its reservation since the early 1980s. Its operations have been limited to bingo, pull-tabs, and video gaming. At this time, Tesuque has no intention of expanding its operations to any other types of gaming. Tesuque's gaming operations have had a tremendous positive impact on the tribal economy. The gaming operations have created dozens of jobs on the reservation for tribal members, non-member Indians, and non-Indians alike. The annual payroll to these employees is several hundred thousand dollars. Moreover, the Pueblo itself earned several hundred thousand dollars in revenues. These figures demonstrate that gaming is a vital part of Tesuque's economy and that, if Indian gaming were either prohibited or limited in scope, numerous Tesuque members and other employees would be without jobs and the Pueblo would lose much needed revenues. And, importantly, Tesuque's gaming operations have had a positive impact on the off-reservation economy. Tesuque spends tens of thousands of dollars a year purchasing supplies from off-reservation suppliers in New Mexico. Indian gaming, therefore, contributes to the success of the off-reservation economy as well, and this fact should not be ignored.

Tesuque strongly opposes any effort to limit further Indian gaming, including any moratorium on Class III gaming, for two fundamental reasons. First, the economies of many tribes, including Tesuque, depend in large part on the revenues generated by gaming. Congress, as the trustee of Indian communities, has the duty to promote economic self-sufficiency on the reservation. Indian tribes have been dependent on federal assistance far too long. Moreover, it is well known that federal assistance is inadequate and that many tribes are in dire need of means to create revenue and employment. To break this chain of dependency, Congress must do everything within its power to encourage business ventures on the reservation, especially ones that are as successful as Indian gaming. Since the inception of IGRA in 1988, revenues from Indian gaming have skyrocketed from \$1 billion in 1988 to \$5 billion dollars in 1992. These figures demonstrate that any effort to limit Indian gaming would be devastating to the economies of numerous tribes across the United States, including the Pueblo of Tesuque.

The statistics on Indian gaming also demonstrate that, despite

numerous problems, the Indian Gaming Regulatory Act has successfully protected Indian gaming. Since the adoption of the IGRA in 1988, over fifty different tribal/state compacts have been executed. In at least some circumstances, therefore, the IGRA works, and states and tribes have been able to reach compromises on Indian gaming issues. Any attempt to impose new limitations on Indian gaming, therefore, is unnecessary at this time. Further, any attempts to limit Indian gaming will inevitably force states and Indian tribes, much as they did in 1988, to engage in a heated battle over jurisdictional and other issues. Such a battle would be expensive and time-consuming to everyone concerned at a time when surely both the tribes and the states have more pressing and productive business to consider. Given that so many states and tribes have managed to settle their differences so far, there is no need to force a new battle over Indian gaming by reopening the IGRA.

Although the IGRA has, in large part, proven to be a workable compromise between tribes and states, it is not perfect and thus, if anything, Congress should indicate that it expects fair Class III compacts to be negotiated in good faith. When the IGRA was passed in 1988, it constituted a compromise between state and tribal governments, a compromise in which the tribes had their sovereignty diminished. States did not want Indian tribes to operate casino type gaming establishments without state control, whereas Indian tribes desired to operate such establishments free of any state influence. After heated debates, a compromise was struck: the tribes were told that they could not engage in Class III gaming until they executed a tribal/state compact. States, in turn, were told that they would negotiate tribal/state compacts in good faith.

Several states, however, including New Mexico, have chosen to break the bargain and refuse to negotiate tribal/state compacts in good faith. Moreover, when sued by tribal governments, these states have raised Tenth and Eleventh Amendment defenses that they are immune from suit. The Governor of New Mexico, for example, when sued by the Sandia Pueblo and the Mescalero Apache Tribe for not negotiating in good faith, has successfully had those cases dismissed on Tenth and Eleventh amendment grounds. Worse, during the pendency of this ongoing litigation, the Governor has refused to negotiate with any tribe as to any gaming activity. As a result, Tesuque, as well as other Pueblos in the State of New Mexico, have no realistic opportunity to negotiate a tribal/state compact. Even though New Mexico's refusal to engage in good faith negotiations is a clear violation of the IGRA, we may have no judicial remedy. Instead, Tesuque is forced to pursue political remedies in traditionally hostile state forums. On the other hand, the immunity issue is not fully resolved and, at this juncture, we are willing to allow the process to continue to its conclusion. Noteworthy about this dilemma, however, is that it arises wholly from the states' refusal to live by the hard-won compromise they agreed to in 1988.

In conclusion, I would like to emphasize that Indian gaming, although by no means a panacea, has been a vital tool in helping to eliminate poverty on the reservation. Congress should encourage Indian gaming to prosper, given that a strong reservation economy is in the best interests of Indian and non-Indians alike.

Mr. RICHARDSON. The Chair recognizes the gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman. Mr. Levine, did you have a statement that you would like to give?

Mr. LEVINE. Yes, I had a brief statement. I wanted to address a couple of myths that were embodied in some of the questions that I think were raised by the Governors and other Congressmen this morning: One of those myths was the question of whether or not citizens of a State can determine basic conditions in the culture of their State and the supposition that they cannot under IGRA or the law as it existed before.

I don't think that is what any of the court decisions say, and I don't think that is where we are today in Indian law. The fact is that the law states that the citizens of the State have to mean what they have said about what the culture of that State is. They simply cannot say in bald terms on their statutes that they have a public policy unless they actually act as if that public policy has some meaning. A case in point: In California we have a constitutional provision that supposedly bars casino-type gambling. That provision has been referred to as suggesting that there is a public policy in the State of California against gaming in any kind of sweeping form.

Yet if you look at what actually takes place in California legally with the full support of the citizens, you get quite a different view. That view of course is not only, as Chairman Manzano said, exemplified by 200 card rooms that allow high-stakes gambling that are fully advertised and turn hundreds of millions of dollars in profits every year, you also have a lottery which is thoroughly advertised, exploited by the State and represents one of the poorest gambles that a consumer could ever engage in.

The State's public policy, therefore, cannot be said to be against gaming. The importance of that under the law is this: The *Cabazon* decision recognized that there were certain kinds of laws in the State that had application certainly in a 280 jurisdiction or on Indian reservations. But it went further and noted that only those laws truly prohibitory, that really embodied the public policy of the State, could be imposed on tribal governments. That was because the Supreme Court followed a long line of cases recognizing that these are truly tribal governments.

Unfortunately in our civics classes across the country, that is not taught. We are taught about various kinds of cultural backgrounds and so forth, but we do not fully, I think, appreciate in this country the fact that there is an entire system of tribal government in place. That tribal government has the same sorts of prerogatives that other governments have. The Supreme Court recognized that and said: We have had to respect those prerogatives. So long as that tribal government is not violating the public policy of the State in which it is located, then it is free to make its own rules insofar as gaming is earned.

In the IGRA that was passed that same concept was carried over. IGRA says that there are two principles that have to be looked at. One is not simply what is on the books of the State. Because if that is all we did, first of all, we would not have a recognition of tribal

sovereignty and, second, we would not have a need for IGRA. Two, we have to also look at the public policy of that State.

In case after case after case rightfully that is what the courts have been doing. These are decisions that belong at the State level in the sense that the courts should look at what is happening in that particular State. If the citizens in a particular State meant it and took all their gaming off the table, then maybe we would have a different state of affairs but what we have right now really is an Act that works.

The only reason it may not work is because the States want to change the rules after the fact and say they really want to get control over tribes that they have never had in the hundreds and hundreds of years that they have been recognized.

Thank you.

Mr. CALVERT. I have a question for the panel. It seems the discussion is primarily about class III gambling. In California for instance class II gambling is allowed. In my area it has been very successful, in San Diego, for the various tribes. The issue is class III gambling. It seems that the definition of what various tribes and their legal advisors are giving them is that, for instance, in the case of California, we are expanding the definition of lotteries, charitable gambling, ship gambling, to include that all class III gambling should be allowed on every Indian reservation in the State of California.

This is for the entire panel. Certainly from others that I have discussed this with, they do not interpret it this way. I assume that you all assume that is the way IGRA was intended. Is that your opinion?

Mr. LEVINE. It is not a shared opinion that comports with Representative Hoagland's sweeping statement that standing in a vacuum one form of class III gambling necessarily renders all forms legal. That may be the case. It may not be. I think you have to look at the facts in a particular situation. I think Mr. Forman wants to address California as well.

We are in litigation on those issues right now. Again, those issues relate to what is really happening in California. We were confronted with a claim by the Attorney General about having casinos on every hilltop when in fact that could not occur and it is simply hyperbole.

Second, the State of California has placed keno parlors on every corner in its convenience stores. That is probably the most graphic illustration of what we mean when we say it is what they do, not what they say.

Mr. GOVER. If I might, Mr. Chairman, to further respond to Mr. Calvert's question and following up on what Mr. Levine said, California not only has placed keno parlors throughout the State, it last placed class III keno and other forms of gambling on an Indian reservation in the State without the benefit of compact, namely on the Aqua Caliente Reservation.

Recently, I understand, they finally removed their illegal gaming from the reservation, but nonetheless the State went ahead and did that. We are in litigation on the question of the extent of California's public policy with respect to gaming. We believe that the

court will rule that California does not have as restrictive a public policy as the Attorney General contends.

I would also like to address some concerns that were expressed earlier with regard to the interplay between tribes and concerns of local governments. The fact of the matter is, at least in California, that local governments, when Indian reservations in California were pockets of poverty, local communities did not care a thing about Indian reservations except maybe the local communities would send charity food baskets out at Christmas or Thanksgiving.

I can give you some concrete examples of that. In Kings County when a member of the Santa Rosa Rancheria was living with his family literally in a chicken coop with an extension cord running across the yard to a house next door and a hose coming from a tap in the house next door, that tribal member got a grant from the BIA to buy a mobile home. They delivered the mobile home to the reservation.

The county came out and red-tagged that mobile home because that area was not zoned for a mobile home. They were going to keep this man and his wife and their four children from moving from a chicken coop into a decent house.

At the Morongo Reservation, the City of Banning annexed a parcel of land, key land that is surrounded by the reservation but in the middle of the residential area of the reservation and they annexed it. Why? To allow the construction of a 1,100 space RV resort right in the middle of the residential area of the reservation over the tribe's objections. The tribe objected to the annexation.

They objected to the construction of this RV park and the city ignored them. So to say that there is concern about IGRA or the Federal Government imposing changes in life-style—

Mr. CALVERT. Excuse me. I must go vote in answer to the quorum call. I am sure my Chairman does also. We will be right back.

Mr. RICHARDSON. I appreciate the gentleman's diligence in being at this hearing. I want to thank this panel for its diligence today. We will recess for 15 minutes and return to hear our final panel.

PANEL CONSISTING OF CALEB SHIELDS, CHAIRMAN, ASSINIBIONE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION, ACCOMPANIED BY MARY PAVEL, ESQ.; MARY ANN ANTONE, CHAIRMAN, LEGISLATIVE COUNSEL, TOHONO O'ODHAM NATION, ACCOMPANIED BY PATRICE EIME, COUNCILMAN; AND JOHN KIEFFER, VICE CHAIRMAN, SPOKANE TRIBE OF INDIANS, ACCOMPANIED BY SCOTT CROWELL, ESQ.

Mr. RICHARDSON. The hearing will continue.

I would like to ask Mary Ann Antone, the Chairwoman of Legislative Counsel, the Tohono O'odham Nation, Sells, Arizona. She will be accompanied by Mr. Kenneth Williams, Councilman Kenneth Williams; the Honorable Caleb Shields, Chairman, Fort Peck Tribe, Poplar, Montana; the Honorable John Kieffer, Vice Chairman, Spokane Tribe, Wellpinit, Washington, accompanied by Scott Crowell.

Members of the panel, thank you. Our final apologies to you for the length of the hearing. I will warn you we have been told that

a vote may occur again shortly. If we have to interrupt again, our apologies.

I would like to recognize the Honorable Caleb Shields for his opening statement. As you all know, your statements are fully in the record. I will ask us to adhere to the five-minute rule.

STATEMENT OF CALEB SHIELDS

Mr. SHIELDS. Thank you, Mr. Chairman.

I am Caleb Shields, the tribal Chairman of the Assiniboiné and Sioux Tribes of Fort Peck, Montana. Our reservation is about two million acres. Our population of Indians is around 6,000. And a number of years ago, the State of Montana established and located a few hundred gaming machines on our reservation without our permission or concurrence. After the regulatory act came out, the tribes negotiated with them, and they were hesitant to agree with tribes about the number of machines that would be allowed on the reservations in Montana.

Most of the tribes, though, are dealing with that issue with compacts. Three tribes have entered into compacts. I understand two tribes are in court, and there are a couple of other tribes that still have not completed any negotiations and compacts. We feel that the Indian tribal gaming is a necessity if economic development is to occur in Indian country in our lifetime.

In Fort Peck, our tribes were not a major gaming tribe. We have concluded the gaming compact with Montana as well as two amendments to it during this past year. And our main purpose in entering into the initial compact was to protect the existing gaming machines that were already operating on our reservation. That was to protect not only some machines that were being operated by Indians but also all the local establishments like the bars where the non-Indians have gaming machines. So we wanted to protect that economy as well.

So that is why we entered into the compact. We were not sure what other gaming we may want to permit in the future. So we agreed with the State to continue further negotiations at least once annually for the next three years to consider additional gaming operations.

We have reservation-wide support for gaming in Montana, in the northeast portion of Montana. City councils, county commissioners, Chambers of Commerce, non-Indian organizations all support a casino for the Fort Peck Reservation.

A lot of times when the interstate governors or representatives in the State say Montanans do not support gaming, I feel they are out of touch with their constituency, at least in our State of Montana.

The support that we have in northeast Montana covers a wide area. Just the reservation itself is larger than many of the States in the United States. As matters turned out, in 1992 alone several unanticipated events happened requiring amendments.

First, the U.S. Attorney issued notice of close down of lottery on reservations, if they weren't included in the compact. So we amended it because the lottery proceeds go to support local public schools, and we have four of them on our reservations.

Second, we had hoped to find investors to locate a casino, hotel and shopping complex on the reservation principally to attract the Canadian tourists.

The third amendment was technical. That was necessary to accommodate coin dispensing machines. I know that gaming has caused heated controversy, particularly expressed by State governments where it is located. I understand that all but one Governor asked the Clinton Administration to support a legislative moratorium on all Indian class III gaming. This attitude, however, ignores that Indian gaming is the only way in which tribes can escape poverty in our lifetime, the burden for any State to continue the widespread economic poverty and social dislocation in Indian country. Even if the matter were viewed as a matter of pure self-interest, no governor would support a resolution favoring the continuation of massive Indian poverty in his or her State. Yet that is the direct effort of the policy that they have opposed when the 49 of 50 governors voted to overturn Indian gaming.

The Governor of our State of Montana simply has not thought through the impact that gaming on reservations could have on the State economy.

The economic benefits of Indian gaming can be accomplished without the expenditure of any significant federal funds. Federal budget constraints have limited, and likely always will limit, the availability of public funds to reduce poverty on reservations. We feel this is simply a fact of life which we must all face. But tribal gaming offers a way out without major public expenditures.

We have some recommendations, Mr. Chairman, that we are submitting to the committee. The Fort Peck Tribes are urging that the committee adopt the following policies toward Indian gaming.

Number one, that the IGRA should not be amended. Indian gaming should be encouraged to grow under the tribal-state compact process.

Number two, where States have sought to avoid the compact process by defending suits that they have not negotiated in good faith by raising the eleventh Amendment, the United States should intervene in suits on the tribal side whenever the tribe has asserted a reasonable cause of action.

Number three, the Department of Justice should vigorously enforce federal laws against all corrupt Indian gaming and vigilantly oversee background investigations of persons engaged in Indian gaming.

Number four, we are encouraging the committee not to support a moratorium on Indian gaming.

Thank you.

[Prepared statement of Mr. Shields follows:]

TESTIMONY OF
CALEB SHIELDS

CHAIRMAN
ASSINIBOINE AND SIOUX TRIBES OF
THE FORT PECK INDIAN RESERVATION, MONTANA

Before the
United States House of Representatives
Subcommittee on Native American Affairs
of the Natural Resources Committee

April 2, 1993

Mr. Chairman and members of the Committee, I am Caleb Shields, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. Approximately 5,700 Indians reside on our Reservation, which contains over 2 million acres. We are five to six hours driving time away from Billings and Great Falls, as well as from Bismarck, North Dakota. The largest, and really only, major population center near our Reservation is Regina, Saskatoon -- two and a half hours north.

Indian tribal gaming is a necessity if economic development is to occur in Indian country in our lifetimes.

The Assiniboine and Sioux Tribes are not a major gaming tribe. We have concluded a gaming compact with Montana, as well as two amendments to it during this past year. The original gaming compact authorized our Tribes to operate gambling machines and simulcast horse racing. Our main purpose in entering into this initial compact was to protect existing gaming machines already operating on our Reservation: (1) at the small casino operated by the Wolf Point Community which has operated a few dozen video gaming machines and bingo games since 1987, and (2) in a few Indian businesses, which under the compact must now become management contractors of not more than 20 machines the Tribes will own. The Tribes were not sure what other gaming we might want to permit in the future, so we agreed with the State to continue to negotiate at least once annually for the next three years to consider additional gaming operations.

As matters turned out, in 1992 alone, several unanticipated events occurred requiring two amendments to our compact. First, in July, the United States Attorney threatened to close the State's lottery on the Reservation unless it was included in the compact. Because the lottery proceeds support Reservation public schools, the Tribes promptly agreed with the State to amend the compact to include the lottery, although the Tribes did not necessarily agree with the United States' legal position or action. Second, the Tribes hope to find investors to locate a casino, motel, restaurant and shopping complex on the Reservation, principally to attract Canadian and other tourists. The State then agreed to a second amendment to our compact authorizing 24 hour operation of live keno and poker games, and to allow machines with a coin drop mechanism. A third technical amendment became necessary to accommodate the coin drops.

I know that Indian gaming has spawned heated controversy, particularly expressed by state governments where it is located. Recently, I understand that all but one governor asked the Clinton Administration to support a legislative moratorium on all Indian "Class III" (i.e., games other than bingo) gaming. This

attitude, however, ignores that Indian gaming is the only way in which tribes can escape poverty in our lifetime.

The undeniable fact is that Indian gaming revenues have created a unique and unprecedented opportunity for over 100 tribes -- which I hope will include my own in years to come -- to escape the generations of poverty that have been Indians' lot for as long as there have been reservations -- five to six generations in the case of our Tribes. Indian gaming grosses about \$5 billion annually. In 1991, "The Gross Annual Wager" in Gaming & Wagering Business reported that tribes netted \$419 million from Class II gaming and \$300 million from Class III gaming. This is starting from zero in 1980. In 1986, before the *Cabazon* decision, the same report placed the net revenues from Indian gaming -- virtually all Class II -- were \$100 million.

The total federal Indian budget is about \$3 billion -- much less than Indian gaming revenues. Gaming revenues also dwarf other sources of tribal income. Indian tribes receive about \$100 million annually from mineral leasing, considerably less than that a year from timber sales. This gives you some idea of the magnitude of Indian gaming and its benefits.

Moreover, the massive economic benefits of Indian gaming can be accomplished without the expenditure of any significant federal funds. The only major major expenditure that is necessary to regulate Indian gaming through the Interior Department and National Indian Gaming Commission -- the Commission's expenses -- are in part paid by assessments against tribes operating gaming. Federal budget constraints have limited, and likely always will limit, the availability of public monies to reduce poverty on reservations. This is simply a fact of life we must all face. Tribal Indian gaming offers a way out *without* major public expenditures.

There are other obvious advantages to Indian tribal gaming, apart from the revenues it produces and its avoidance of public expenditures.

First, the IGRA requires all net gaming revenues to be expended for public purposes, or, in circumstances limited by the Act, *per capita* distributions to tribal members. This ensures the monies are plowed back into the Indian community, and used for public goals, not private profit.

Second, Indian gaming has greatly reduced, in many cases eliminated, the scourge of Indian unemployment on many reservations. The employment benefits are of course not limited to Indians, since many if not most Indian gaming enterprises employ more non-Indians than Indians. And the economic impact of a successful

Indian gaming enterprise spreads through adjacent non-Indian communities where tribes, Indian and non-Indian employees, and tribal members spend most of the revenues earned from the enterprise. All the local communities near our Reservation support our gaming activities.

Third, the social benefits of successful Indian gaming enterprises spread throughout the surrounding communities and region as well. The obvious social costs of generations of Indian poverty and dislocation are not confined to reservations or the Indian population alone. Federal and state governmental expenditures decline if Indians become employed and self-sufficient. Studies in Minnesota have shown that AFDC payments dramatically decrease as gaming ventures are established. Crime decreases as well. For example, in Montana, 38% of all penitentiary inmates are Native Americans. This is *more than six times* the percentage of Indians in the State population. Virtually *all* of these inmates, moreover, committed felony crimes *outside* reservations; Indians committing serious crimes on reservations in Montana (which almost all contain substantial non-Indian populations) are tried in federal or tribal court, because Montana only has jurisdiction over one of the seven reservations in the state.

Finally, Indian gaming contains literally the promise of the "American Dream" for tribes. It encourages them to become self-reliant entrepreneurs and eliminates dependency. It promotes the federal self-determination policy. As the Supreme Court succinctly stated in the *Cabazon* case (480 U.S. at 218-219):

* * * The Cabazon and Morongo Reservations contain no natural resources which can be exploited. the tribal games at present provide the sole source of revenues for the operation of the tribal governments and the provision of tribal services. They are also the major sources of employment on the reservations. Self-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members.

It *cannot* be to the advantage of any state to continue the widespread economic poverty and social dislocation in Indian country, even if the matter were viewed as a matter of pure self-interest. No Governor would support a resolution favoring the continuation of massive Indian poverty in his or her state. Yet that is the direct effect of the policy they have proposed. The Governor of my State simply has not thought through the impact gaming on reservations could have on the Montana prisons, and the State economy.

Indian gaming is the *only* policy that has actually worked on a widespread level to eliminate Indian poverty without – or even with – substantial governmental expenditures. The extraordinary economic successes, and the striking social benefits they have already produced outside reservations, at virtually no cost in public expenditures, create compelling support for Indian gaming. I admit that gaming may not be the ideal vehicle for Indian economic development in a perfect world. But it is the only business that has worked on this kind of scale and that promises to eliminate so much Indian poverty and distress. If there were any other way to bring economic success to reservations, it would have been tried and proven. Only this one has succeeded, at least on this magnitude.

I know that some question why Indians should be allowed to hold what seem to be "special" rights to conduct gaming. The arguments in favor of "special" rights for Indian tribes to operate gaming in preference to private non-Indian entrepreneurs certainly rest on the unique level of economic distress suffered by Indians, the extraordinary promise of Indian gaming to alleviate that distress, and the provisions in the IGRA that require Indian gaming revenues to be devoted exclusively to public purposes in contrast to private gain. I have discussed all of these. Tribes have not cornered too large a part of the gaming market, or compete unfairly with other segments. Although tribes' gaming revenues of \$5 billion gross and over \$700 million net are of course momentous and unprecedented in Indian country, they are a small fraction of total gaming in America. In 1991, for example, the Gross Annual Wager of the United States in Gaming & Wagering Business reported that lotteries in 33 states *netted* over \$10 billion dollars in 1991. Nevada and New Jersey casinos netted over \$9 billion, *thirty times as large* as all Class III Indian gaming.

All Indian gaming in all is less than two percent of the total gaming industry. This, interestingly, is about twice the percent of Indians in the national population. I suggest these magnitudes, particularly when contrasted with the needs involved, hardly suggest that Indian gaming overall competes unfairly with other forms of gaming or consumes too "large" a share of the gaming market.

I also think that generally what may seem to be "special" rights favoring Indian operated gaming are supported by 200 years of federal recognition that tribes have sovereign status. Indians on reservations are organized into tribal governments, with constitutions and political institutions adopted and functioning as provided by federal law. These governments are empowered by federal law to adopt local police power regulations relating to many matters, not just gaming. Moreover, tribal gaming operations are overseen by federal authorities in the Interior Department and National Indian Gaming Commission in a way that gaming by other groups is not, thus giving much greater confidence that the games will be scrupulously regulated.

There is no comparable political structure or federal oversight into the operations of other persons or groups that might fairly claim a special right to operate gaming because of their economic distress.

My Tribes are among the more remote in terms of major population centers. In my view, however, the undeniable fact that gaming will not of itself eliminate *all* Indian poverty does not constitute an acceptable argument against the tribal gaming that does alleviate poverty -- indeed, very considerable poverty -- where it exists. We want the opportunity to try and develop a means to lift our people out of poverty, even if it can never succeed like the most successful tribes have because we are remote. Indian gaming enterprises offer tribes the opportunity to participate in the "American Dream," and ought not to be curtailed for the reason that not all Indians are benefitted equally by them, or benefitted strictly according to their "need."

I have heard concern expressed about criminal involvement in Indian gaming, just as there would be for any gaming. The intensive federal regulation and the requirement in the IGRA that all persons involved in Indian gaming undergo a thorough background investigation approved by both the tribe and National Indian Gaming Commission should allay this concern. The Department of Justice has repeatedly testified before Congress that there has not been significant involvement of organized crime or other criminal elements in Indian gaming. It has also promised vigilant and vigorous enforcement of the laws where crime does occur, and has in fact investigated and prosecuted scattered violations of law that have arisen in Indian gaming.

I have also heard that some governors feel that the IGRA divests them of control over gaming policy in their states, expressing concern that they do not want casinos on every Indian reservation statewide, and cannot prevent this under the IGRA. I think this view is simply incorrect. One of the most important features of the IGRA is that it does not allow gaming contrary to the public policy of a state. Thus, as I see it, states likely have the ultimate power to stop Indian Class III gaming **if they are willing to do the same to their other citizens**. That seems to me the most a state can fairly expect -- it should not be able to allow its non-Indian people to carry on an activity and deny it to Indians, a federally-protected group.

A better approach, I believe, would be for states to enter into compact negotiations with tribes. I would expect most tribes to be reasonable, as our Tribes have been, and to accommodate any fair state limitations in the compact negotiations envisioned by Congress. It also seems farfetched to me to suppose that federal courts and mediators will require compacts that unreasonably impair legitimate state interests. But if these events occur, the states do have the ultimate weapon to curtail

Indian Class III -- or indeed any -- gaming in their borders if they are willing to restrict their own citizens. This gives a state the final say on gaming public policy.

I have a final word, though, for states that choose to so limit Indian gaming. If a state wants to choke Indian gaming development, it ought to provide comparable funds to promote Indian economic development. For example, the legislatures of such states should establish Indian Economic Development Committees to provide solid economic development for reservations in other ways -- such as reducing the state tax burden on the few non-Indian companies doing business on reservations. I think states will conclude that Indian gaming offers tribes the only way out of poverty. There is no alternative.

I urge the Committee to adopt the following policies toward Indian gaming.

1. IGRA should not be amended, and Indian gaming should be encouraged to grow under the tribal-state compact process.
2. Where states have sought to avoid the compact process by defending suits that they have not negotiated in good faith by raising the Eleventh Amendment, the United States should intervene in such suits on the tribal side wherever the tribe has asserted a reasonable cause of action.
3. The Department of Justice should vigorously enforce federal law against all corrupt Indian gaming, and vigilantly oversee background investigations of persons engaged in Indian gaming.

Mr. Chairman and members of the Committee, tribes are doing all that they can to end the scourge of poverty that has plagued Indian country for so many generations. We urge Congress to act to help us bring this about, so that within our lifetimes tribes can achieve self-sufficiency. Please do not limit the federal right of tribes to conduct Indian gaming -- and I promise you that within a decade, most reservations will be self-sufficient.

Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

Mr. RICHARDSON. Thank you very much, Mr. Chairman. My understanding is I will be visiting your reservation on Tuesday.

Mr. SHIELDS. Yes, we have that all worked out with staff member Steve Heeley. We thank you, and Congressman Pat Williams of Montana, for coming to Montana next week for a hearing on economic development, because I did hear one panel witness say you ought to get out to Indian country. We know you come from Indian country. And you will be addressing economic development issues on our reservation next week. Thank you.

Mr. RICHARDSON. Thank you, Mr. Chairman.

I would like to welcome Chairwoman Mary Ann Antone. Let me just make sure that is correct. You are Chairwoman of the Legislative Council of the Tohono O'odham Nation. Is that correct?

Ms. ANTONE. Yes.

Mr. RICHARDSON. Please proceed, Madam Chairwoman.

STATEMENT OF MARY ANN ANTONE

Ms. ANTONE. Accompanying me this afternoon is Council member Patrice Eime.

Mr. Chairman and members of the committee, I wish to express my appreciation to you for the opportunity to present the statement of the Tohono O'odham Nation of Arizona and the Nation's own efforts to secure the benefits of gaming as an economic enterprise.

The Tohono O'odham Nation formerly known as the Papago Tribe of Arizona is located in southern Arizona, along the United States and Mexico border. The Nation is one of the largest tribes in the United States, with nearly three million acres of land and over 18,000 enrolled members. The Nation is a sovereign, federally recognized tribe, organized under the Indian Reorganization Act of 1934, and exercises inherent powers of self-government over its own affairs and members within its territory.

The Nation, in exercising its sovereign powers, has sought to develop its economy by providing jobs and reducing extremely high unemployment among its members, and has generated revenues for tribal government operations and programs by establishment of a tribal gaming enterprise upon its lands. The Nation has done so faithfully following the requirements of the Indian Gaming Regulatory Act and in the face of strong political opposition from the Governor of Arizona.

The Nation operated a fairly successful bingo hall on its San Xavier Reservation south of Tucson before the passage of IGRA. Despite its modest size the bingo hall did produce moderate revenues for the Nation and created new jobs for tribal members. After passage of IGRA, the Nation took early steps to authorize, develop and implement a class III tribal gaming enterprise to meet the three goals of the Act: economic development, job creation and revenue generation.

In recognition that a requirement for a compact for class III gaming placed States in a superior position to tribes, IGRA required States to negotiate with tribes for a compact in good faith or face suit by tribes in federal court. If a court found the State in bad faith negotiation, it was required to appoint a mediator. Upon failure to agree, the tribe and the State are required to submit their

last best offer to the mediator who would then select that offer which best comports with the law and the circumstances. If the tribe's offer was selected and the State refused to accept the plan within 60 days, the mediator is required to submit the tribe's plan to the Secretary of the Interior for implementation.

The Nation faithfully followed every requirement of the Act. In 1988, we made a written request to then-Governor Mofford to enter into negotiations for a class III tribal-state compact. It was clear from the State law that the State of Arizona permitted a broad range of class III gaming.

Even though the Act required a State to respond to a tribal request for negotiation within 180 days, the Mofford administration refused to engage in negotiations on the grounds that the Governor's term was soon to expire and the issue was left to the next administration. Rather than exercise its right to sue the State for bad faith, the Nation waited upon the new administration.

Upon renewing its request to the new Fife Symington administration, the Nation could not get a meeting with the Governor until a crisis occurred in May of 1992 by the federal raids on tribal gaming establishments and public pressure was brought to bear. Only then did representatives of the Governor agree to meet with the tribes.

However, after only a few meetings, it soon became apparent that the State was not going to engage in good-faith negotiation and bargaining. Upon suit in federal court by the Nation and other requesting tribes as authorized by IGRA, the State raised the tenth Amendment as a defense to tribal suit, a complete and bad faith renegeing on the compromise the States insisted on in the enactment of IGRA.

Despite their bad faith use of the Tenth Amendment, the State of Arizona did agree to engage in the mediation process established in IGRA, fully expecting to prevail. The federal court appointed former Chief Justice of the Arizona Supreme Court Frank X. Gordon as the mediator to consider the last best offer of both parties for a class III tribal-state compact.

In an outstanding victory for the Nation, the Pascua Yaqui Tribe and the White Mountain Apache Tribe, the mediator on February 15, 1993, accepted the three tribes' proposals. The State has until April 22 to accept the mediator's decision or the mediator will submit the compact to the Secretary of the Interior for implementation.

In a final act of deceit and bad faith the Governor of Arizona rejected the IGRA process and convened a special session of the Arizona Legislature to enact legislation to criminalize casino gaming to prevent Arizona Indian tribes from achieving economic development, revenue independence, and employment for its members.

Acting out of ignorance and reckless haste, the State legislature passed S.B. 1001, State law which was immediately signed by Governor Symington on March 5, 1993. This law becomes effective in June of 1993. This was done despite the great public outcry in the State of Arizona at this dishonorable and hypocritical action.

The new law exempts the State's own gaming enterprises, the Arizona lottery, the Fantasy Five and instant win scratch games. At the current time there are ten variations of the scratch games

and four televised drawings a week offering \$1 million and \$50,000 prizes. The law further exempts betting on horse and dog racing in Arizona.

The Tohono O'odham Nation has condemned in the strongest possible terms the dishonorable and reprehensible actions of the Governor and legislature of the State of Arizona. This regrettable action by the State not only has caused continued tribal-state conflict in the area of Indian gaming but has impacted fragile tribal-state relationships and cooperation in many other areas.

The Tohono O'odham Nation, in concert with the other concerned tribes of Arizona, will contest the applicability of this new State law on Indian gaming through litigation in the federal courts. It is the Nation's opinion that the new law has not changed the open-arms policy of the State in favor of gambling nor has it, without exception, criminally prohibited various forms of gaming in Arizona to all persons under all circumstances.

A subsequent mediator's report quoted Professor William M. Thompson, an expert in gaming, as stating: "Gambling in Arizona is permitted and consistent with the public policy of Arizona. A wide range of gaming activities occur within the State. Arizona permits more forms of gambling than any other State in the Southwest, with the exception of Nevada."

In addition, the Tohono O'odham Nation intends to pursue all political avenues to deny the Symington administration the ill-begotten benefit of their deceitful actions. The Nation supports the referendum drive to refer this law to the people in the general election of 1994. The Arizona tribes fully expect to gain the necessary signatures within the time allotted.

The Tohono O'odham Nation was very grateful for the Secretary of the Interior's comments during a press conference in Phoenix on February 19 supporting the decision of the mediator to accept the tribes' offers, but we were very disappointed at his most recent action in response to the mediator's report and the action of the State of Arizona. Secretary Babbitt has put forward a proposed plan for resolution of the gaming dispute in Arizona.

Mr. RICHARDSON. I will ask you to summarize, please.

Ms. ANTONE. There are three points he made. Class III gaming by tribes would be limited to machines only, restrictions would be placed on the machines, and any compromise proposal would be available to all recognized Indian tribes.

I just wanted to say that the Tohono O'odham Nation has stated that we followed the law. The Nation accepted IGRA and did everything in its power to make it work. It did work. The mediator found in our favor after the State of Arizona agreed to abide by the decision.

We want to move forward with the procedures established by the IGRA. We fully expect the Secretary of the Interior to receive the mediator's report on April 22, and after consultation with the Nation as required by the Act, that they carry out the class III gaming plan adopted by the mediator.

The Tohono O'odham Legislative Council, the governing body of the Tohono O'odham Nation, fully expects the Secretary of the Interior to honor his trust responsibility to the Nation and the future generations of the O'odham. We are tired, but the future of our

children is in our hands. We will continue to do what we believe is right. This completes my statement. Thank you.

[Prepared statement of Ms. Antone follows:]



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TESTIMONY ON INDIAN GAMING BY MS. MARY ANN ANTONE, CHAIRWOMAN TOHONO O'ODHAM NATION LEGISLATIVE COUNCIL BEFORE THE SUBCOMMITTEE ON NATIVE AMERICANS

April 2, 1993

Mr. Chairman, and members of the committee, I wish to express my appreciation to you for the opportunity to present the statement of the Tohono O'odham Nation of Arizona on Indian gaming and on Nation's own efforts to secure the benefits of gaming as an economic enterprise.

The Tohono O'odham Nation (formerly known as the Papago Tribe of Arizona) is located in southern Arizona, along the United States-Mexican border, the Nation is one of the largest Indian tribes in the United States, with nearly 3,000,000 acres of land and over 18,000 enrolled tribal members. The Nation is a sovereign, Federally-recognized Indian tribe, organized under the Indian Reorganization Act of 1934 and exercises inherent powers of self-government over its own affairs and members within its territory.

The Nation, in the exercise of its sovereign powers, has sought to develop its economy, by providing jobs and reducing extremely high unemployment among its members, and has generated revenues for tribal government operations and programs by the establishment of a tribal gaming enterprise upon its lands. The Nation has done so by faithfully following the requirements of the Indian Gaming Regulatory (IGRA) and in the face of strong, political opposition from the Governor of Arizona.

The Nation operated a fairly successful Bingo hall on its San Xavier reservation south of Tucson before the passage of IGRA. Despite its modest size, the Bingo hall did produce moderate revenues for the Nation and created new jobs for tribal members. After passage of IGRA, the Nation took early steps to authorize, develop and implement a Class III tribal gaming enterprise to meet the three goals of the Act, i.e., economic development, job creation, and revenue generation.

In recognition that a requirement for a Compact for Class III gaming placed states in a superior position to tribes, IGRA required states to negotiate with tribes for a compact in good faith or face a suit by tribes in Federal court. If a court found the state in bad faith negotiation, it was required to appoint a mediator. Upon failure to agree, the tribe and the state are required to submit their Last Best Offer to the mediator who would then select that offer which best comported with the law and circumstances. If the tribe's offer was selected and the state refused to accept the plan within 60 days, the mediator is required to submit the tribe's plan to the Secretary of the Interior for implementation.

The Nation faithfully followed every requirement of the Act. In 1988, it made a written request to then-Governor Mofford to enter into negotiations for a Class III Tribal-State Compact. It was clear from state law that the State of Arizona permitted a broad range of Class III gaming.

Even though the Act requires a state to respond to a tribal request for negotiation within 180 days, the Mofford Administration refused to engage in negotiations on the grounds that Governor Mofford's terms was soon to expire and the issue should be left to the next Administration. Rather than exercise its right to sue the state for bad faith, the Nation waited upon the new Administration.

Upon renewing its request to the new Fife Symington Administration, the Nation could not get a meeting with the Governor until a crisis occurred in May 1992 by the Federal raids on tribal gaming establishments and public pressure was brought to bear. Only then did representatives of the Governor agree to meet with the tribes. However, after only a few meetings, it soon became apparent that the State was not going to engage in good faith negotiation and bargaining. Upon suit in Federal court by the Nation and other requesting tribes as authorized by IGRA, the State raised the 10th Amendment as a defense to the tribal suit, a complete and bad faith reneging on the compromise the state's insisted on in the enactment of IGRA.

Despite their bad faith use of the 10th Amendment, the State of Arizona did agree to engage in the mediation process established in IGRA, fully expecting to prevail. The Federal Court appointed former Chief Justice of the Arizona Supreme Court Frank X. Gordon as the mediator to consider the last best offer of both parties for a Class III Tribal-State Compact. In an astounding victory for the Nation, the Pascua Yaqui Tribe and the White Mountain Apache Tribe the Mediator, on February 15, 1993, accepted the three tribes compact. The state has until April 22nd to accept the Mediator's decision or the Mediator will submit the compact to the Secretary of the Interior for implementation.

In a final act of deceit and bad faith, the Governor of Arizona rejected the IGRA process and convened a special session of the Arizona State legislature to enact legislation to criminalize

casino gaming to prevent Arizona Indian tribes from achieving economic development, revenue independence, and employment for its members. Acting out of ignorance and reckless haste, the State legislature passed SB1001, state law which was immediately signed by Governor Symington on March 5, 1993. This law becomes effective in June 1993. This was done despite the great public outcry in the State of Arizona at this dishonorable and hypocritical action. The new law exempts the State's own gaming "enterprises", the "Arizona Lotto", the "Fantasy Five", and Instant Win Scratch games. At the current time there are ten variations of the "Scratch" games and four televised drawings a week offering \$1 million and \$50,000 prizes. The law further exempts betting on horse and dog racing in Arizona.

The Tohono O'odham Nation has condemned, in the strongest possible terms, the dishonorable and reprehensible actions of the Governor and Legislature of the State of Arizona. This regrettable action by the State not only has caused continued tribal-state conflict in the area of Indian gaming, but has impacted fragile tribal-state relationships and cooperation in many other areas.

The Tohono O'odham Nation, in concert with the other concerned tribes of Arizona, will contest the applicability of this new state law on Indian gaming through litigation in the Federal courts. It is the Nation's opinion that the new law has not changed the open-arms public policy of the state in favor of gambling nor has it, without exception, criminally prohibited various forms of gaming in Arizona to all persons under all circumstances.

A subsequent Mediator's report quoted Professor William M. Thompson, an expert in gaming, as stating:

"Gambling in Arizona is permitted and consistent with the public policy of Arizona. A wide range of gaming activities occur within the state. Arizona permits more forms of gambling than any other state in the southwest, with the exception of Nevada."

In addition, the Tohono O'odham Nation intends to pursue all political avenues to deny the Symington Administration any ill-begotten benefit from their deceitful actions. The Nation supports the referendum drive to refer this law to the people in the general election of 1994. The Arizona tribes fully expect to gain the necessary signatures within the time allotted.

The Tohono O'odham Nation was very gratified with the Secretary of Interior's comments during a press conference in Phoenix on February 19th supporting the decision of the Mediator to accept the tribes' offers. But we were very disappointed at his most recent action in response to the Mediator's report and the action of the State of Arizona. Secretary Babbitt has put forward a proposed plan for resolution of the gaming dispute in Arizona. This plan sets out three principles which include--

1. Class III Gaming by Tribes would be limited to machines only, as long as the State of Arizona did not sanction any additional form of Class III gaming.

2. Any compromise proposal would be available to all recognized Indian tribes in Arizona.

3. Restrictions would be placed on the specific number and location of machines, provided that all tribes would have a minimum quota of 250 machines, with larger tribes entitled to additional allocations.

We appreciate Secretary Babbitt's attempt to defuse the political firestorm created by Governor Symington and we are thankful for his kind efforts to preserve Indian gaming as an economic tool. But we can only view his proposals and principals as an unintended invasion of our tribal sovereignty and rights and nullification of the victory we won in the mediation process.

We followed the law. The Nation accepted IGRA and did everything in its power to make it work. And it did work. The Mediator found in our favor after the State of Arizona agreed to abide by the decision. We want to move forward with the procedures established by IGRA. We fully expect the Secretary of Interior to receive the Mediator's report on April 22nd and, after consultation with the Nation as required by the Act and after a reasonable period to prescribe procedures to carry into effect the Nation's Class III gaming plan adopted by the Mediator.

The Tohono O'odham Legislative Council, the governing body of the Tohono O'odham Nation, fully expects the Secretary of the Interior to honor his trust responsibility to the Nation and the future generations of the O'odham. We are tired, but the future of our O'odham children is in our hands and we will continue to do what we believe is right.

That completes my statement, Mr. Chairman, and we will answer any questions you or the sub-committee may have.

Mr. RICHARDSON. Vice Chairman Kieffer?

STATEMENT OF JOHN KIEFFER

Mr. KIEFFER. I want to thank the committee for the opportunity to appear and present the tribe's view on the specific issues of the Tenth and Eleventh Amendment defenses to actions brought by the tribes under the Indian Gaming Regulatory Act.

The Spokane Tribe supports H.B. 1028, corrective legislation to amend IGRA. Under H.B. 1028, those State governments which refuse to consent to the jurisdiction of the federal courts to resolve disputes under IGRA are taken out of the process. Under H.B. 1028, tribes are no longer without a remedy when confronted with States that would defy federal law rather than deal fairly with tribes.

Under H.B. 1028, the intentions of Congress in passing IGRA to provide true economic development, self-sufficiency, and strong tribal government, can become reality.

My time is brief, accordingly I would like to supplement the record with a copy of the position paper of the National Indian Gaming Association, which endorses H.B. 1028.

As we testified over a year ago, if the States succeed on these issues, IGRA will become an albatross that precludes tribes from realizing the intended purposes of the Act. In your deliberations over amendments to IGRA, be very clear that tribes have made every attempt to make IGRA work. The States are attempting to sabotage IGRA, and now they come before you and seek to be rewarded for their belligerent defiance of federal law and their blatant hostility to tribal sovereignty. Do not allow States to benefit from their own bad acts.

Ironical aspects of the Eleventh Amendment issue underscore the hostility of the State governments toward IGRA. IGRA permits State governments to be involved in a process that had previously excluded State governments. Washington State sat down at the negotiation table with the Spokane Tribe, supposedly pursuant to IGRA. Yet, the State now asserts IGRA is unenforceable against the State. In other words, Washington State is taking a position that not only does IGRA allow the State be involved in the process of establishing a regulatory framework for class III gaming, it also allows the State unequivocally to preclude class III gaming on Indian lands simply by refusing to consent to suit pursuant to IGRA.

There are now District Court decisions throughout the country that have ruled on the Tenth and Eleventh Amendments. With me is the tribe's attorney, Scott Crowell. He can answer any questions you may have regarding the specifics of the lawsuits.

The Spokane Tribe has always had the better argument, based on strong legal and moral grounds, but win or lose, the States have benefitted by the uncertainty, expense and delay they have created by asserting the defenses.

The State's ability to hide behind the Tenth and Eleventh Amendments create two untenable situations:

First, many tribes are coerced into accepting unfair compacts that are not justified in light of the *Cabazon* decision codified in IGRA because they cannot afford the costs and lost opportunity associated with continued negotiation or litigation with State govern-

ments that defy IGRA. These are not compacts; rather they are the products of unjust State intrusion upon tribal sovereignty.

Many tribes have no realistic alternative but to accept the State's terms. For example, upon signing a compact with Washington State, the Muckleshoot Tribe issued this statement.

"The agreement does not represent the best interests of our tribe. It limits our sovereign rights. We are not accepting this agreement because we believe it is wise, which we do not, but because we are desperate. We simply cannot afford further delays and expenses of litigation."

Last May, while still attempting to negotiate a compact, the Confederated Colville Tribes testified to the Senate Select Committee.

"What is particularly galling about the State's strategy is its efforts encouraging tribes to remain at the negotiating table while remaining firm on its position regarding allowable games and their scope and at the same time aggressively pursuing the Eleventh Amendment argument. It appears once again the whipsaw mentality is being applied here. The State essentially says negotiate on our terms or you can turn around and face the AG's office in litigation that is going nowhere because we will take whatever steps as a State to prevent you from reaching the substantive merits of the litigation."

That was by Matthew Dick, spokesman for the Colville Tribes.

The Confederated Colville Tribes have since filed against Washington State and have been served with answers asserting both the Tenth and Eleventh Amendments. Effectively, Washington State has transformed IGRA's government-to-government relationship into a master-slave relationship. The situation is intolerable.

Second, tribes must now ask themselves whether to concede and accept the States' assertions that IGRA is unconstitutional. Tribes need to be contemplating gaming activities on the grounds that there is no IGRA, and the law of the land is the *Cabazon* decision. The tribes' repeated efforts to make IGRA work are going unnoticed and unrewarded.

What incentive remains for tribes to continue their defense of IGRA in courts when States are telling the courts that IGRA is bad law? In the void created by the States' constitutional defenses to IGRA and Congress' failure to enact corrective legislation, the resulting environment will be chaotic, confusing and confrontational.

Congress should question the States' wisdom in creating the chaos. The Spokane Tribe does not want to see such an environment. That is why the Spokane Tribe has been so vocal and tireless in its pursuit of corrective legislation.

Congress should reject the current attempts of State governors to rewrite history and to ignore the sovereign status of tribal governments. The governors have defied federal law. They have abused a privilege that Congress granted to them to the detriment of Native Americans. Now they seek legislation to overturn *Cabazon* and blatantly to abolish tribal sovereignty. Is IGRA another entry into a long ugly history of broken promises to Native Americans?

The States' assault on tribal gaming comes at the same time that these same States are expanding gaming activities at a historic rate. The States do not seek to abolish gaming. They seek to abolish Indian gaming. The States' assault on tribal gaming comes at

the same time that tribes in Minnesota, Wisconsin, and Connecticut are documenting that IGRA can work. Those tribes are examples of what the Spokane Tribe and other tribes throughout the country are capable of doing.

Mr. RICHARDSON. Mr. Vice Chairman, I will ask you also to summarize, please.

Mr. KIEFFER. I just have one more little short paragraph.

Spokane Tribe seeks your assistance to see that IGRA works as it was intended to work, to reject the assault of States on tribal sovereignty. Many State governors are now asking Congress to overturn *Cabazon* and further erode tribal sovereignty far beyond the intrusion of IGRA. They couch the argument as one of States' rights. States never had any right to govern tribal gaming. The only right of States to be involved is the compacting provision set forth in IGRA, the very provision they now claim to be unconstitutional. If the State governments refuse to abide by IGRA, then remove those States from the process altogether.

The Spokane Tribe again thanks this committee for the opportunity to testify. If you have any questions at this time, I and my lawyer will be glad to answer them as best we can. Thank you.

[Prepared statement of Mr. Kieffer and position paper follow:]



Spokane Tribe of Indians

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CENTURY OF SURVIVAL

1881 - 1981

**STATEMENT OF
JOHN KIEFFER, VICE-CHAIRMAN
SPOKANE TRIBE OF INDIANS
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
U.S. HOUSE COMMITTEE ON NATURAL RESOURCES
APRIL 2, 1993**

Mr. Chairman, my name is John Kieffer, Vice Chairman of the Spokane Tribe of Indians. On behalf of the Spokane Tribe, I want to thank the Committee for the opportunity to appear and present the Tribe's views on the specific issues of the Tenth & Eleventh Amendment defenses to actions brought by Tribes under the Indian Gaming Regulatory Act (IGRA). The Spokane Tribe supports H.B. 1028, corrective legislation to amend IGRA. Under H.B. 1028, those state governments, which refuse to consent to the jurisdiction of the federal courts to resolve disputes under IGRA, are taken out of the process. Under H.B. 1028, tribes are no longer without a remedy when confronted with states that would defy federal law rather than deal fairly with tribes. Under H.B. 1028, the intentions of Congress in passing IGRA, to provide true economic development, self-sufficiency, and strong tribal government, can become reality. My time is brief, accordingly I would like to supplement the record with a copy of the Position Paper of the National Indian Gaming Association, which endorses H.B. 1028.

As we testified over a year ago, if the states succeed on these issues, IGRA will become an albatross that precludes tribes from realizing the intended purposes of the Act. In your deliberations over amendments to IGRA, be very clear that tribes have made every attempt to make IGRA work. The States are attempting to sabotage IGRA, and now they come before you and seek to be rewarded for their belligerent defiance of federal law and their blatant hostility to tribal sovereignty. Do not allow states to benefit from their own bad acts.

Testimony of John Kieffer
for the Spokane Tribe of Indians
Subcommittee on Native American Affairs
U.S. House Natural Resources Committee
April 2, 1993 Page 1

Ironical aspects of the Eleventh Amendment issue underscore the hostility of state governments towards IGRA. IGRA permits state governments to be involved in a process that had previously excluded state governments. Washington State sat down at the negotiation table with the Spokane Tribe, supposedly pursuant to IGRA. Yet, the State now asserts that IGRA is unenforceable against the State. In other words, Washington State is taking the position that not only does IGRA allow the State be involved in the process of establishing a regulatory framework for Class III gaming, it also allows the State unequivocally to preclude Class III gaming on Indian lands simply by refusing to consent to suit pursuant to IGRA.

There are now many District Court decisions throughout the country that have ruled on the 10th & 11th Amendment defenses. With me is the Tribe's attorney, Scott Crowell. He can answer any questions you may have regarding the specifics of the lawsuits. The Spokane Tribe has always had the better argument, based on strong legal and moral grounds, but win or lose, the states have benefitted by the uncertainty, expense and delay they have created by asserting the defenses.

The states ability to hide behind the 10th & 11th Amendments create two untenable situations:

First, many tribes are coerced into accepting unfair compacts that are not justified in light of the Cabazon decision codified in IGRA because they cannot afford the costs and lost opportunity associated with continued negotiation or litigation with state governments that defy IGRA. These are not "compacts", rather, they are the product of unjust state intrusion upon tribal sovereignty - many tribes have no realistic alternative but to accept the state's terms. For example, upon signing a compact with Washington State, the Muckleshoot Tribe issued this statement:

"The agreement does not represent the best interests of our tribe, It limits our sovereign rights. We're not accepting this agreement because we believe it's wise, which we do not, but because we are desperate. We simply cannot afford further delays and expenses of litigation."

Gilbert King George, Vice -Chairman, Muckleshoot Tribal Council, Morning News Tribune, 2/20/93

Testimony of John Kieffer
for the Spokane Tribe of Indians
Subcommittee on Native American Affairs
U.S. House Natural Resources Committee
April 2, 1993 Page 2

Last May, while still attempting to negotiate a compact, the Confederated Colville Tribes testified to the Senate Select Committee:

What is particularly galling about the State's strategy is its efforts encouraging tribes to remain at the negotiating table while remaining firm on its position regarding allowable games and their scope and at the same time aggressively pursuing the Eleventh Amendment argument. It appears once again the whipsaw mentality is being applied here. The State essentially says negotiate on our terms or you can turn around and face the AG's office in litigation that is going nowhere because we will take whatever steps as a State to prevent you from reaching the substantive merits of the litigation.

Statement of Matthew Dick, Spokesperson for the Confederated Tribes of the Colville Reservation, before the Select Committee on Indian Affairs, United States Senate, March 18, 1992.

The Confederated Colville Tribes have since filed against Washington State and have been served with Answers asserting both the 10th & 11th Amendments. Effectively, Washington State has transformed IGRA's government-to-government relationship into a master-slave relationship. The situation is intolerable.

Second, Tribes must now ask themselves whether to concede and accept the states' assertions that IGRA is unconstitutional. Tribes need to be contemplating gaming activities on the grounds that there is no IGRA, and the "law of the land" is the Cabazon decision. The tribes repeated efforts to make IGRA work are going unnoticed and unrewarded. What incentive remains for tribes to continue their defense of IGRA in courts, when states are telling the courts that IGRA is bad law? In the void created by the state's constitutional defenses to IGRA and Congress' failure to enact corrective legislation, the resulting environment will be chaotic, confusing and confrontational. Congress should question the states' wisdom in creating the chaos. The Spokane Tribe does not want to see such an environment. That is why the Spokane Tribe has been so vocal and tireless in its pursuit of corrective legislation.

Congress should reject the current attempts of state governors to rewrite history and to ignore the sovereign status of tribal governments. The governors have defied federal law. They have abused a privilege that Congress granted to them to the detriment of Native Americans. Now they seek legislation to overturn Cabazon and blatantly to abolish tribal sovereignty. Is IGRA another entry into a long ugly history of broken promises to Native Americans?

Testimony of John Kieffer
for the Spokane Tribe of Indians
Subcommittee on Native American Affairs
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April 2, 1993 Page 3

The states' assault on tribal gaming comes at the same time that these same states are expanding gaming activities at a historic rate. The states do not seek to abolish gaming - they seek to abolish Indian gaming. The states' assault on tribal gaming comes at the same time that tribes in Minnesota, Wisconsin and Connecticut are documenting that IGRA can work. Those tribes are examples of what the Spokane Tribe and other tribes throughout the country are capable of doing.

The Spokane Tribe seeks your assistance to see that IGRA works as it was intended to work, to reject the assault of states on tribal sovereignty. Many State Governors are now asking Congress to overturn Cabazon and further erode tribal sovereignty far beyond the intrusion of IGRA in 1988. They couch the argument as one of state's rights. States never had any right to govern tribal gaming. The only "right" of their states to be involved is the compacting provision set forth in IGRA, the very provision they now claim to be unconstitutional. If the state governments refuse to abide by IGRA, then remove those states from the process altogether.

The Spokane Tribe again thanks this Committee for the opportunity to testify. If you have any questions at this time, I will be be glad to answer them as best I can.

Sincerely,

The Spokane Tribe of Indians



John Kieffer
Vice-Chairman

National Indian Gaming Association

POSITION PAPER*

TRIBAL GAMING AND THE NEED FOR CORRECTIVE LEGISLATION TO REMOVE OBSTACLES TO COMPACTING

I. Introduction

The seventy-one member Indian tribes of the National Indian Gaming Association (NIGA) urgently request the immediate support and passage by the 103rd Congress of corrective legislation to overcome recent and widespread efforts by states to thwart fundamental protective safeguards, which Congress provided under the Indian Gaming Regulatory Act of 1988 (IGRA), against arbitrary and hostile state action towards Indian tribes. IGRA specifies that a tribe can obtain the vital employment and other benefits which class III gaming under IGRA can bring to its otherwise government - dependant economy, provided the tribe first enters into a tribal/state compact. To protect a tribe from possible overreaching by a state in negotiating its regulatory role, if any, under the compact, IGRA requires the state to bargain in good faith or face the possibility that a federal court will permit the tribe to proceed under rules selected by a mediator or, if the state refuses to participate altogether, the Secretary of the Interior.

In order to assure tribes that there will be either good faith negotiations with states or viable alternatives as Congress intended, legislation is urgently needed to overcome recent efforts by some states to resist enforcement of IGRA's good faith negotiation requirement. Those states are invoking technical defenses to federal court enforcement based upon the Tenth and Eleventh Amendments to the United States Constitution. Those defenses have resulted in lengthy and expensive legal conflicts and delays, to the extreme detriment of tribal economies and Native Americans generally and contrary to a basic congressional purpose of IGRA:

[T]o provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.

25 U.S.C. § 2701(1).

The proposed legislation provides that either a state agree to submit to the jurisdiction of the federal court in the event there is a need for a determination of the good faith issue - - the resistance to such jurisdiction being the crux of the Tenth and Eleventh Amendment defenses - - or the class III process will proceed without the state's involvement, through regulation in the form of a class III certificate negotiated with the National Indian Gaming Commission. That commission already has certain oversight and regulatory functions under IGRA. In order to provide for its broadened responsibility under this legislation, its authority to assess Indian gaming revenues has been increased.

II. Background

Tribal gaming is governmental gaming, thus IGRA mandates that tribal gaming proceeds be used for traditional governmental purposes such as funding tribal government operations and providing for the general welfare of the tribal population. In those situations where IGRA has had an opportunity to work, tribal governments have not only become strong and truly self-sufficient, the tribal gaming operations have greatly benefitted the surrounding non-Indian communities, as well. Enactment of the proposed corrective legislation would immediately result in the direct creation of

* Condensed version for submission to record for oversight hearings on April 2, 1993 before the Subcommittee on Native American Affairs, Committee on Natural Resources, U.S. House of Representatives. The full version including applicable graphs can be obtained from NIGA's offices.

many thousands of jobs, remove many from unemployment lines and existing welfare roles, and immediately generate millions of dollars in governmental revenues for tribal, local, state and federal governments. These jobs and true economic development would be concentrated in areas of existing economic blight, where unemployment is very high and living conditions are very poor. Indirectly, tribal gaming would provide many thousands of additional jobs and the creation of a true economic base and adequate infrastructure in Indian country. All of this is possible without raising taxes or increasing the deficit a single dollar. Yet, the compacting problems with the Tenth and Eleventh Amendments, grounded in the bad faith tactics of several state governments, totally preclude most American Indian tribes around the country from creating this economic wealth and from achieving the stated purposes of IGRA.

III. The History Behind IGRA

As with most civilized cultures, gaming has long been a tradition in America. Gaming was critical to the funding of the Revolutionary War through numerous lotteries, and funded the beginning of venerable institutions such as Harvard University. Today, the national trend is to expand and embrace gaming as a source of governmental revenue, and as a stimulus to economic growth. Thirty-four state governments have jumped into the lottery business. This past year witnessed the greatest expansion ever, as these lotteries offered new and creative games to increase revenues. Several states now have video lotteries, or state-owned gaming devices. Lotteries in Oregon and California now offer keno games every five minutes. Washington State's lottery now offers keno, quinto, and a poker game called "beat the state" that plays like a video poker machine. Several states have joined forces to offer extra-large jackpots to stimulate demand. The states of South Dakota and Colorado have approved casino gaming to revitalize the economies of rural mining towns. Virtually the entire Mississippi River from Louisiana to Illinois has opened up to riverboat casinos. Louisiana recently approved the operation of the world's largest casino in downtown New Orleans. Gaming, in connection with tribal ceremonies and celebrations, has been part of American Indian culture since time immemorial. Tribes have become an important part of this industry as they invite the public to play games on tribal lands. Tribal gaming is unique from these other games, however, in that gaming is often the only viable source of employment and governmental revenues available to the tribes. In the history of this country, IGRA is the only Act ever adopted by Congress for the purpose of raising revenues for tribal governments.

Beginning in the late 1970s, several tribal governments began looking to gaming as a way to attract economic development and provide employment on Indian lands. State governments, spurred on by competing gaming special interests, asserted control over these operations and attempted to shut them down. After nearly a decade of court battles in federal district and appellate courts, the Supreme Court, in 1987, reaffirmed with absolute certainty, the sovereign and exclusive right of American Indian Nations to regulate gaming activities on Indian lands, in California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083 (1987). The Supreme Court held that neither state nor county laws applied to the regulation of gaming activities on American Indian lands in the absence of Congressional consent to the application of such laws.

In a letter from Senators Inouye and McCain to the Governors of the several states, last June, the states were reminded that IGRA provided fair-minded states an opportunity to be involved in the regulation of tribal gaming, where previously there was no such opportunity. The Senators noted that following the Court's action in Cabazon, considerable pressure was brought to bear upon the members of Congress to develop a comprehensive federal framework for the regulation of gaming activities on American Indian lands. Within the context of the United States' trust responsibility for American Indian lands and resources, and the historical government-to-government relationship between the United States and Indian tribal governments, much serious discussion and consideration was given to the establishment of a federal commission that would be solely responsible for the comprehensive regulation of gaming activities on American Indian lands. However, members of Congress soon began to hear from the governors and attorneys general of states in which Indian reservations and Indian tribes were located, expressing their desire that Congress give its consideration to a mechanism whereby

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state governments would have a significant role in the kind of gaming activities that would be conducted within state borders and the regulation of gaming operations.

IGRA divides gaming into three classes. Class I includes social games played solely for prizes of minimal value and traditional forms of tribal gaming engaged in as part of a tribal celebration or ceremony. These activities are within the exclusive jurisdiction of the tribe. Class II games include bingo and related games and non-banking card games, as well as certain "grandfathered" card games that were operated by Indian tribes in four named states before May 1, 1988. Class II gaming is within the jurisdiction of the tribes, subject to the requirements of the Act, with oversight by the National Indian Gaming Commission. Class III includes all other forms of gaming. Class III gaming activities are lawful on Indian lands only if the activities are (1) authorized by ordinance or resolution adopted by the governing body of the tribe that meets the requirements of the statute and is approved by the commission chairman; (2) located in a state that permits such gaming for any purpose by any person, organization or entity; and (3) conducted in conformance with a tribal/state compact. The essential feature of the Act is the tribal/state compact process, the means Congress devised to balance the states' interest in regulating high stakes gambling within their borders and the tribes' resistance to state intrusions on their sovereignty. The structure of the Act conforms to the basic principle that the states and tribes negotiate as sovereigns.

After much deliberation, the 101st Congress enacted IGRA. Congress settled on a formulation which is premised on a government-to-government relationship between Indian tribal governments and state governments. A critical provision of IGRA is the entitlement of Indian tribes to conduct gaming activities "within a state that permits such gaming for any purpose by any person, organization or entity." The Senate Report to IGRA clarifies that this provision was intended by Congress to be the codification of the principle set forth by the Supreme Court in Cabazon, namely that if a state has adopted a public policy that permits gaming, that state has adopted a position that gaming is not immoral or prohibited, and consequently that state has no legitimate grounds to dictate the parameters, or to regulate the scope, of tribal gaming activities. IGRA provides an avenue for such states to be involved in the process of developing a regulatory scheme adequate to shield tribes from organized crime and to assure that gaming is conducted fairly and honestly by both the operator and players. The Act contemplates that tribes will work out agreements, or "compacts" with state governments, which govern the regulation of class III games. IGRA's scheme only works if states negotiate in "good faith" with the several Indian tribes. If a state has refused to enter into negotiations or failed to negotiate in good faith, IGRA authorizes tribal governments to initiate action in federal district court. Upon finding that the state has failed to conclude negotiations in good faith, the court appoints a mediator to resolve the dispute. The negotiations must conclude successfully within sixty (60) days, or the mediator will select among the compacts proposed by the tribe and by the state.

IV. Where IGRA has been allowed to work, IGRA is successfully accomplishing its expressed purposes of economic development and tribal self-sufficiency

After years of negotiation and litigation with state governments, tribes in Minnesota, Wisconsin, Connecticut and elsewhere have been able to take advantage of the opportunity of tribal gaming, and to get up and running. The undeniable numbers of jobs and revenues, and the programs now being funded by those revenues, provide a clear picture of what tribes throughout the United States are capable of doing. Tribal gaming in those states has resulted in the direct creation of tens of thousands of jobs, removed thousands from unemployment lines and existing welfare roles, and generated millions of dollars in governmental revenues for tribal, local, state and federal governments. Indirectly, tribal gaming in those states has provided many thousands of additional jobs and the creation of a true economic base and adequate infrastructure in Indian country. Attached, in the Addendum, are two studies that document the experience of the Minnesota tribes, a study of the experience of the Oneida Indian Nation in Wisconsin, a study of public opinion and attitudes towards tribal gaming in California, and articles that document the experience of the Mashantucket - Pequot Tribe in Connecticut. A review of those materials reveals the incredible potential of tribal gaming to

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have a massive, positive and immediate impact on not only tribal economies, but the local, state, regional, and even the national economy. For example, the Foxwoods facility operated by the Mashantucket-Pequot Tribe, alone, employs over 3,200 Indians and non-Indians with an annual payroll in excess of \$ 60-million. By early this year, those numbers are expected to increase to 5,000 employees and an annual payroll over \$ 100-million. In Minnesota, ongoing and planned construction projects, alone, will pump nearly \$ 100-million into the local economy. The multiplier effect on the economic impact in areas surrounding tribal gaming facilities translates into tens of thousands of jobs and millions of dollars for area economies. This impact is even more dramatic than the impact of private sector growth in the area; Because revenues from tribal gaming are, by statute and by choice, used to fund tribal programs, the money is kept in the area, creating many more jobs, and generating much more economic wealth. The study of the Oneida Nation provides a graphic example of this impact:

[Graph has been omitted from Condensed version to comply with Committee formatting requirements - requests for complete copies should be directed to NIGA'S offices]

The study prepared by Midwest Hospitality Advisors quantifies tribal gaming in Minnesota's dramatic impact on reducing the welfare and public assistance rolls:

[Graph has been omitted from Condensed version to comply with Committee formatting requirements - requests for complete copies should be directed to NIGA'S offices]

And contrary to a frequently repeated assertion, tribal gaming injects millions into the tax coffers of local, state and federal governments. Conversely, tribal gaming has removed people from the welfare roles and significantly decreased the tax burden of subsidizing depressed, rural economies. In Minnesota, the first year of operation has generated over \$ 21-million in such tax revenues:

[Graph has been omitted from Condensed version to comply with Committee formatting requirements - requests for complete copies should be directed to NIGA'S offices]

The gaming revenues to the tribes have funded a diverse and exciting collection of governmental programs. Gaming revenues can create tribal infrastructure, improve tribal court systems, and establish needed social services. For example, The Oneida Tribe of Wisconsin has used its gaming revenues for the development of a major hotel/convention center, an environmental testing laboratory, a printing enterprise, and a chain of convenience stores. The Mille Lacs Band of Chippewa Indians has used gaming revenues to build a school, health care clinic, a water tower, improved sewers and roads, and day care facilities. The Mashantucket-Pequot Tribe uses gaming revenues to fund a wide range of health, education, and recreational services for tribal members, and to construct a health clinic, a child development center, and a major Native American museum and research center. The list is endless. The types and size of these programs are as diverse as programs funded by state and local governments. The tribes do not view tribal gaming as the panacea to their problems. The tribes view gaming as a source of revenues to invest in long term answers to long term problems.

As can be seen by example, tribes with successful gaming operations are investing that money back into infrastructure and business development on tribal lands. This success has markedly increased the self-esteem of tribal people in the communities where the reservations are located. The tribes' governmental gaming ventures have created new economic centers in rural areas of the states in which they are located. They are viewed by the surrounding communities as having stopped the outflow of rural economic wealth to the major metropolitan areas and are instead, reversing that trend, attracting metropolitan dollars into rural areas. Without tribal gaming, these successes would not be possible. Indeed IGRA may stand as the lone example of success among numerous efforts by Congress to stimulate economic growth. These investments promise to position these tribes to survive as viable cultural, economic and sovereign entities well into the next millennium.

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These tremendous results did not come easy. In each situation, the tribes were confronted by hostile state governments in negotiations. The tribes in each case, exercised their right under IGRA to file an action in federal court and have a mediator appointed to resolve the disputes. In Minnesota, the State refused to negotiate for the play of table games until a federal magistrate ruled that Minnesota was legally obligated under IGRA to negotiate for the play of banking card games. Lower Sioux Indian Community v. Minnesota, No. 4-90-936 (D. Minn. December 20, 1990). In Connecticut, the State absolutely refused to negotiate with the Mashantucket-Pequot Tribe and after the federal district court ordered the state to negotiate for all games allowed for charity fund-raising in the State, Mashantucket Pequot Tribe v. Connecticut, 737 F.Supp. 169. *aff'd* 913 F.2d 1024 (2nd Cir.1990) cert. denied ___U.S.___(1991), Connecticut submitted a compact for the play of those games to the court-appointed mediator, which was selected by the mediator, and even then, Connecticut refused to consent to its own compact. Wisconsin refused to negotiate in good faith until the federal district court ordered that the State was obligated to negotiate for all games with the elements of prize, consideration, and chance. Lac Du Flambeau Band v. Wisconsin, 770 F. Supp. 480 (W.D. Wisc. 1991), *appeal dismissed* 957 F.2d 515 (7th Cir. 1992).

These isolated examples of success stand in sharp contrast to the plight of Native Americans, nationally. Cold statistics cannot convey the stark reality of the plight of American Indians where economic opportunity in gaming is stonewalled by states refusing to negotiate compacts in good faith. Census data reveals that the poverty rate among American Indians stands at 28%, compared to 12% among non-Indians; median family incomes stands at \$ 13,680.00 for American Indians, compared to \$ 19,920.00 for non-Indians; unemployment stands at 61.9% for American Indians, compared to around 7% for non-Indians. The glaring disparity is also found in suicide rates, homicide rates, high school drop-out rates, infant mortality rates, etc. etc. The reader might take a moment and visualize the reality reflected in these statistics - the impoverished living conditions, the constant struggle to make it through the month, the chemical dependency, the low self-esteem, and the despair. Standing between this stark reality and the success stories described above is the states' defiance of IGRA, and their refusal to submit to the jurisdiction of the federal courts.

The key to the success of the tribes in compacting under IGRA is the ability to take states, refusing to negotiate tribal/state compacts in good faith, to federal court. The federal courts, alone, are empowered to implement the remedy of mediated negotiation. States were taken to task on the merits of their negotiation positions in dealing with tribes, and across the board, the states were losing. The federal courts were properly applying the principles embraced in Cabazon, and codified in IGRA, and were disallowing attempts to limit the scope of tribal gaming in states that allow a broad scope of gaming activity. The veil of hypocrisy of the states was easily and properly pierced by the federal courts. Losing consistently on the merits of the tribes' claims against them, the states began looking for a way to prevent the federal courts from ruling on the substantive merits of the tribes' allegations against the states. They have seized on arguments sounding in the Eleventh and Tenth Amendments to the United States Constitution. The practical effect of the states' tactics is that tribes are now faced with the unjust dilemma of accepting the states' "take-it-or-leave-it" terms or face long, protracted litigation with an uncertain result. Consequently, many tribes have now accepted compacts with states that severely and unjustifiably restrict the tribes' ability to capture the gaming marketplace.

V. The Eleventh Amendment

Congress enacted IGRA pursuant to its has plenary powers over matters involving Indian affairs. At the time IGRA was enacted in 1988, federal courts were uniformly hearing cases brought by Indian tribes pursuant to 5 U.S.C. § 1362, which provides that federal courts shall have jurisdiction over "all civil actions brought by an Indian tribe. . . wherein the matter in controversy arises under the Constitution, laws or treaties of the United States." In June of 1991, however, the Supreme Court ruled that § 1362 does not provide jurisdiction over state governments without their expressed consent to a lawsuit, in the case of Blatchford v. Native Village of Noatak, 111 S.Ct. 2578 (1991). The

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Blatchford opinion was based upon the Eleventh Amendment to the United States Constitution, which reads in pertinent part:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Two Supreme Court cases, published on the same day in 1989, ruled that Congress may abrogate, or sever, state sovereign immunity in Acts created under the Fourteenth Amendment or the Interstate Commerce Clause. Dellmuth v. Muth, 491 U.S. 223, 227, 109 S.Ct. 2397 (1991), and Pennsylvania v. Union Gas Company, 491 U.S. 1, 5, 109 S.Ct. 2273, 2277 (1991). Those two cases argue that states ceded certain powers to the federal government when those states joined the United States. Accordingly, the Supreme Court ruled that Congress may abrogate, or sever, state sovereign immunity in Acts created under the Fourteenth Amendment or the Interstate Commerce Clause, so long as the plain language of the federal statute provides, with "unmistakable clarity" that Congress intended for state sovereign immunity to be abrogated.

The casual observer may have concluded that the "unmistakable clarity" test is the end of the issue because it is difficult to imagine a clearer expression of intent than that found in IGRA:

The United States District Courts shall have jurisdiction over any cause of action initiated by an Indian tribe arising from the failure of the state to enter into negotiations . . . or to conduct negotiations in good faith.

25 U.S.C. § 2710(d)(7)(A). However, since the Blatchford opinion in June of 1991, several federal district courts have ruled that IGRA does not confer jurisdiction over the state even if the language of IGRA is unmistakably clear.

The genesis of this argument was found in the analysis of an order granting a stay in Mississippi Band of Choctaw Indians v. Mississippi, 1991 WL 255614 (S.D. Miss. Apr. 9 1991) wherein the Judge, in dictum, suggested that Congress may not have the constitutional authority to abrogate, or sever, state sovereign immunity in Acts of Congress created pursuant to the Indian Commerce Clause. The Judge noted that the Indian Commerce Clause is fundamentally different than the Interstate Commerce Clause and noted that he is unaware of any authority that Congress can abrogate, or sever, state sovereign immunity in any context other than the Fourteenth Amendment or the Interstate Commerce Clause. The Mississippi Judge never vacated his stay, however, as of January, 1993, six federal district courts have picked up his analysis and used it to rule against tribes in actions brought under IGRA on the theory that Congress acted outside the scope of its constitutional authority when it abrogated state sovereign immunity in passage of IGRA. Poarch Band of Creek Indians v. Alabama 776 F.Supp 550 (S.D. Ala. 1991) (dismissing State), 784 F.Supp. 1549 (S.D. Ala. 1992) (dismissing Governor), *appeal pending*, (11th Cir. # 92-6244) (consolidated with Seminole); Spokane Tribe v. Washington, 790 F.Supp. 1057 (E.D. Wash. 1991) (dismissed State, but did not dismiss Governor), *appeal pending*, (9th Cir. ## 92-35113 & 92-35446); Sault Ste. Marie Tribe v. Michigan, 1992 WL 713832 (W.D. Mich. Mar. 26, 1992) *appeal pending* (6th Cir.); Ponca Tribe v. Oklahoma, (# 92-988T W.D. Okla. Sept. 9, 1992); Pueblo of Sandia v. New Mexico, (# 92-0613 JC, D. N.M. decided Nov. 13, 1992); The Apache Tribe of the Mescalero Reservation v. New Mexico, (# 92-076 JC, D. N.M. decided December 22, 1992). Similar Motions to Dismiss are now pending in litigation in New York, Montana, and South Dakota, and has been threatened in negotiations throughout the country.

Two district courts have ruled entirely in favor of the Tribe on the issue. Seminole Tribe v. Florida, (# 91-6756 D. Florida 1992) *appeal pending*, (11th Cir. # 92-4652) (Consolidated with Poarch Creek); Cheyenne River Sioux Tribe v. South Dakota, (# 92-3009 D.S.D. January 8, 1993). The district court in Spokane Tribe, ruled partially in favor of the Tribe by retaining jurisdiction over the Governor on the theory that the Eleventh Amendment does not preclude the court from ordering state officials to comply with federal law.

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Appeals are now pending in the Sixth, Ninth, and Eleventh Circuits, although no appellate decisions have come down on the issue as of the date of this Position Paper. In those appeals, Seventeen states have filed amici briefs supporting the position of states that Congress lacks the authority to abrogate, or sever, sovereign immunity when acting pursuant to the Indian Commerce Clause.

In response to these actions taken by states, on June 16, 1992, Senators Dan Inouye and John McCain, the bipartisan leadership of the Senate Select Committee on Indian Affairs, wrote to the state Governors urging those that have asserted the Eleventh Amendment defense to deal fairly with the tribes or face corrective legislation that takes these states out of the process altogether. Since that letter was sent, the states have filed their amici briefs in the pending appeals. That filing should be interpreted as a blatant rebuking of the Senators' letter.

VI. The Tenth Amendment

Since the states received the Senators' letter regarding the Eleventh Amendment tactics, they have looked for yet another technical defense, and have seized upon the Tenth Amendment. The states argue that the Tenth Amendment reserves certain types of activities, including the regulation of gaming, for the exclusive province of the states and, accordingly, IGRA is unconstitutional because it imposes regulatory responsibility on the state. The Tenth Amendment asserts:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The issue of the Tenth Amendment was first raised by Arizona in Yavapai-Prescott Indian Tribe v. Arizona, 1992 WL 144732 (D. Ariz. 1992) *appeal pending*, (# 91-1696 9th Cir.). Judge Rosenblatt summarily dismissed the argument as premature, suggesting that the state may have an argument if ever the facts existed that the state was unwillingly assuming a regulatory responsibility. However, in the last three months, three cases have been decided against the tribes on this issue. Ponca Tribe v. Oklahoma, (# 92-988T W.D. Okla. Sept. 9, 1992); Pueblo of Sandia v. New Mexico, (# 92-0613 JC, D. N.M. decided Nov. 13, 1992); The Apache Tribe of the Mescalero Reservation v. New Mexico, (# 92-076 JC, D. N.M. decided December 22, 1992). Although not raised at the district court level, the issue has now been raised by the states in the appellate briefs in Spokane, and Sault Ste. Marie. The most recent court decision (as of January, 1993), Cheyenne River Sioux, rejected South Dakota's Tenth Amendment defense on the grounds that IGRA affords states an opportunity to be involved in the regulation of class III gaming, but does not force any regulatory responsibility upon the state. However that litigation too, is likely to be thrown into the long, protracted process of appeals.

VII. The threat of a ruling that IGRA is unconstitutional

The position of the tribes should be very clear: The tribes are defending and supporting IGRA and have taken the position in litigation that Congress has the authority to abrogate state sovereign immunity and that IGRA does not impose regulatory responsibilities on unwilling states. However, if the tribes are wrong on either issue, the intentions of the 101st Congress will be defied and the entire IGRA may be ruled unconstitutional. Such a result would create chaos in tribal gaming. The tribes do not desire to see such a result, and the foresight of the states should be severely questioned in that states' have no good reason for causing such a result.

The irony of the compacting problem is that states made a deal with tribes and Congress in the original passage of IGRA. States successfully lobbied this body to be included in a process that previously excluded state governments. Now, rather than abide by the deal that they made, the states are asserting that they can totally prevent tribes from engaging in class III activities by refusing to consent to federal court jurisdiction. The situation is unfortunate. Tribes are willing and able to abide by

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the deal made in 1988. However, if states choose not to abide by that same deal, Congress should consider a technical amendment to the Act removing uncooperative states from the process altogether. Such an amendment is offered by the Tribes to save the constitutionality of IGRA.

Several courts have already come perilously close to ruling that the entire IGRA is unconstitutional. The ramifications of the decision may be far reaching, including a revisit to the constitutionality of Public Law 280, which forces some states to assume jurisdiction on tribal lands, and including a revisit of the country's environmental laws and the ability of the average citizen to prevent state governments from violating those laws. It is incumbent upon the 103rd Congress to act with all due haste to enact the proposed corrective legislation in order to avoid what will otherwise surely be a chaotic and unfortunate situation.

VIII. The corrective measure: the proposed bill

The Addendum includes proposed legislation to correct the deficiencies in IGRA, which the NIGA membership endorses. The proposed bill enables tribes confronted with this compacting problem to bypass the uncooperative state and negotiate directly with the executive branch to set forth the regulations for class III games. The bill is designed to make IGRA consistent with the intentions of the 101st Congress. This approach is precisely what the bipartisan leadership of the Senate Select Committee on Indian Affairs suggested would be needed if states continue their "bad faith" negotiation tactics.

The uncertainty created by recent decisions on the Tenth and Eleventh Amendment is pervasive and effects every other issue on tribal gaming. As non-Indian gaming expands across the country at a historical rate, viable tribal gaming operations are stopped dead in their tracks because of the uncertainty created by the Tenth and Eleventh Amendment defenses. Congress, in 1988, originally intended to subject state governments to federal court jurisdiction. If state governments are not willing to fulfill their end of the deal that was made in 1988, then IGRA should be amended to take those states out of the process.

The proposed bill requires a state to consent to the jurisdiction of the federal courts within 180 days of the tribe's initial request for compact negotiations. This 180 days is the same time period that must elapse under IGRA before a tribe may file an action in federal court. If the uncooperative state fails to consent, it has effectively "opted out" of the regulation of class III games. The proposed bill empowers the National Indian Gaming Commission to approve and modify a "class III certificate" submitted by the Tribe to govern the play of class III games. Although the certificate may provide an opportunity for a state to be involved in the regulation and oversight of the gaming activities, no regulatory responsibilities may be imposed on unwilling states.

The proposed legislation creates a process that is designed to cure the compacting problem. NIGA supports the Act and has proposed the legislation to embrace the original intention of Congress in 1988, when the Act was passed. The proposed bill contains a provision that ensures the validity and continuation of compacts now in place - it is imperative that Congress protect the viable tribal gaming operations that are now in place and generating the tremendous results and huge economic impact, discussed previously. NIGA does not support any other proposed legislation to amend the Act. NIGA will oppose any legislation that further infringes upon tribal sovereignty or further erodes the tribes' ability to compete in the gaming marketplace. If the proposed bill is amended in any way that diminishes tribal sovereignty or threatens existing class III gaming operations, NIGA will oppose the amended legislation.

The member tribes of NIGA are very hopeful and optimistic that the tribes will be able to work with the 103rd Congress and the Clinton-Gore Administration to see that tribal gaming provides fair and honest gaming and provides the economic development and jobs that Indian nations and the United States so desperately need. The tribes seek your immediate help to cure the compacting problem by supporting the proposed legislation.

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Mr. RICHARDSON. Vice Chairman Kieffer, let me lead off with this question to you or your counsel. Do you believe that a case raising the Eleventh Amendment will be presented to the court and that they will be asked to resolve the issue?

Mr. CROWELL. We believe there is a good possibility that it will, given that there are a number of cases now from a number of different States. Some of them have ruled in favor of the States on the Eleventh Amendment. Three of them have ruled in favor of the tribes. There are four cases that address the Tenth Amendment here. Again there are three rules in favor of the States and two in favor of the tribes.

Given that inconsistency, there are some serious questions as to what the proper resolution of the question is going to be. There are current appeals pending before four different circuit courts. No decisions have come out. The best possible world would be for appellate court decisions in favor of the tribes and the Supreme Court to deny cert, but there is no guarantee that will happen.

The second part of that is the case law the tribes rely upon in terms of defense of the Eleventh Amendment; they do have the better argument, in the opinion of most members of the tribal bar. There were two 1988 cases that came down on a 5-4 decision regarding the ability of Congress to abrogate State sovereign immunity in the context of Superfund legislation. That decision was a 5-4 decision. Two of those members are gone that voted in favor of finding abrogation. A third member is soon to leave the court.

Mr. RICHARDSON. Let me ask Chairman Shields, and I think you touched on it in your testimony, and it came up in the hearing. We heard today that some of the States are seeking to have us here in the Congress overturn the regulatory versus prohibitory test, established in the *Cabazon* case and subsequently incorporated in the Indian Gaming Act. Do you have any view on that, either yourself or counsel?

Mr. SHIELDS. Mr. Chairman, our legal counsel, Reid Chambers, had to go to that meeting in Connecticut this afternoon. Accompanying me today is Mary Pavel, our other tribal attorney. I wouldn't want to confuse the issue with my own views that I might get it mixed up.

Mr. RICHARDSON. I will ask you to submit that for the record.

Mr. SHIELDS. We will be glad to do that.

[Editor's note.—The information was not received at the time of printing.]

Mr. RICHARDSON. The Arizona situation, what is the latest turn of events there? You mentioned Secretary Babbitt's most recent statement. What is the tribe's position vis-a-vis the last public position of the Interior Department?

Ms. ANTONE. I believe someone mentioned earlier that we have stated that we are protecting the integrity of our compact, and that the Tohono O'odham Nation is standing behind the compact selected by the mediator.

Mr. RICHARDSON. What is the Governor of Arizona's most recent action? If you could take me through, I am two weeks' behind the news on the situation in Arizona. If you could just take me through what has happened in the last 14 days, regarding the gaming issue.

Mr. EIME. Yes, I guess the issue that we talked about on the referendum, when the Governor called the special session and they passed Senate Bill 1001, which criminalizes machines, and what the tribes are doing in Arizona is they are having a referendum drive to put it on the ballot in 1994 and have the people vote on it.

During the session of the State legislature, there were various amendments that were offered. One goes to if the State is totally against gambling, you know, they should just eliminate all gambling in Arizona. They couldn't agree on that. But there were several of them that were offered.

So I think that is where we are at now. The tribes are pushing for the referendum.

Mr. RICHARDSON. Thank you very much.

Let me say that this chairman has very much appreciated all of you, those of you listening to this hearing and those of you in the audience, those of you that have testified. I think it has been a very illuminating process. We are going to continue these hearings so we can deal with this issue accordingly.

I want to take this opportunity again to those of you that traveled long distances, and I know all of you on this panel did, fellow Westerners, members of the Governors group, Members of Congress, tribal leaders, council leaders, attorneys. I want to thank all of you for appearing today. This will be the first of a series of hearings we will have on this issue. I look forward to my visit to Indian reservations in Montana, Wisconsin, and Arizona this week. We will also be travelling to Connecticut for a site visit to see the Mashantucket Pequots' new casino. Accordingly, this hearing stands adjourned. Thank you.

[Whereupon, at 2:00 p.m., the subcommittee was adjourned.]

APPENDIX

APRIL 2, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



OFFICE OF THE GOVERNOR
STATE CAPITOL
SANTA FE, NEW MEXICO 87503

BRUCE KING
GOVERNOR

(505) 827-3000

TESTIMONY OF GOV. BRUCE KING OF NEW MEXICO TO THE U.S. HOUSE OF REPRESENTATIVES' SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

April 2, 1993
9:30 a.m., 1324 Longworth House Office Building

Thank you, Mr. Chairman and Representatives, for giving me the opportunity to express my views to you on the implementation of the Indian Gaming Regulatory Act (IGRA). During the course of the past two years, my fellow western governors and I have become concerned about the growing confusion and bad feeling resulting from the use of the act.

Before I express my concerns, I want to make it clear that I certainly do not oppose the efforts of Native Americans to create better and more prosperous lives. In New Mexico, approximately one in every ten of my constituents is a Native American. Along with my fellow Governors, I try to represent Native American interests and to work cooperatively with tribal governments and I believe we have been remarkably successful.

In that spirit, I briefly will address three of my concerns, concerns which I know are shared by other western governors: 1) the IGRA's consistency with state laws regulating non-Indian gaming operations; 2) the good-faith negotiation requirement for Class III gaming regulatory compacts; and 3) the suitability of gaming on off-reservation trust lands.

First, consistency with state law. When the IGRA was passed in 1988, governors believed that the law would limit tribal gaming operations to those activities allowed by a state for non-Indian gaming operations, thus ensuring a consistent and predictable regulatory structure throughout a state, both on and off reservations. As you know, under the IGRA, gaming operations are divided into three classes and tribes may operate only that class of games which is permitted by the state in which their reservation is located. Thus, if a state allows bingo, a Class II game, tribes must also be allowed to run bingo. If a state allows low-stakes blackjack, a Class III game, tribes could start negotiations with the state to operate equivalent games of blackjack on their reservations.

This interpretation of the IGRA has been challenged in federal courts. A federal district court decision, Lac du Flambeau Band of Lake Superior Indians v. Wisconsin, held that, if a state permits any type of Class III gaming, that entire class of gaming may be open to the tribes. According to the Wisconsin federal district court's decision in Lac du Flambeau, the point in question is "not whether the state has given express approval to the playing of a particular game, but whether [the state's] public policy toward Class III gaming is prohibitory or regulatory."

The Lac du Flambeau decision has created difficult questions which the language of the IGRA does not seem to be able to answer. For instance, should tribes be allowed to operate games which non-Indians are prohibited by state law from operating? Should tribes observe state limits on hours of business and other conditions of operating? It does not exaggerate the situation facing many states to say that as tribal gaming privileges are expanded, non-Indian gaming interests will also demand that their privileges be expanded, whether or not this is in accordance with state law and the preferences of a majority of citizens in a state. Plainly, these concerns need to be addressed under the IGRA, and thought should be given to making the IGRA consistent with state laws on gaming.

The second subject of concern is State-Tribal Compacts for Class III Gaming. The provision of the IGRA was designed to ensure equity between Indians and non-Indian gaming and to balance the legitimate concerns and goals of both state and tribes, while respecting their individual rights. Under this provision of the IGRA, tribes seeking to start Class III gaming on their reservations must request negotiations with the state. At that point, if the request is for a type of gaming legal to any person in the state, the state government must negotiate with the tribe "in good faith" within 180 days.

Some tribes and states have negotiated compacts successfully and other negotiations are pending. Yet at the last count, tribes in 13 different states has initiated action in federal courts against state governments or U.S. attorneys alleging "bad faith." In New Mexico, as in other states, we take the position that the tribes may not sue states and their officials in federal court because the Eleventh Amendment to the U.S. Constitution bars these suits. The federal district court in New Mexico has agreed in two such cases, which are currently on appeal. Be that as it may, disputes over negotiating gaming compacts are costly and unproductive for both the states and the tribes.

The western governors believe that many of the allegations of "bad faith" that arise in these suits do not stem from a reluctance on the part of the states to negotiate with tribal governments, but from a lack of clarity in the IGRA. "Good faith" bargaining is not defined clearly in the act. The IGRA does not state that failure to complete a compact is a breach of good faith.

The effect of Lac du Flambeau and other decisions has been to provide the tribes with the expectation that governors, through "good faith" negotiations, may release them from certain state requirements and laws. This places governors in a very awkward position. Until this situation is clarified, many tribes and states will continue to disagree over what forms and limits are acceptable.

My third concern is the status of Indian trust lands. As you know, many tribes control lands not physically located within the confines of their reservations. I would welcome a further indication from Congress about whether these lands were intended to fall within the provisions of the IGRA.

As you can tell from my statement, the issue of Indian gaming is of great importance to me and to my fellow western governors. The Indian Gaming Regulatory Act seeks to balance the tribes' right to promote economic development for their members with the states' need to maintain health and safety for all citizens. I support this goal. However, the act as currently written, when coupled with the interpretation of certain federal courts, has led to a bad situation in which many states and tribes are fighting one another over the issue of gaming, rather than working jointly, as intended, to develop a cooperative system of regulation.

We governors are frustrated by the uncertainty and confusion which currently surrounds the IGRA. We respectfully request that Congress amend the IGRA to clarify the relationship of our individual state laws to tribal gaming operations. The IGRA was intended to recognize the rights and responsibilities of both states and tribes. Unfortunately, as it now stands, the partial implementation of this law has led to a situation in which both sides feel their rights and responsibilities are being infringed upon.

In 1989, western governors passed Resolution 89-014, State Tribal Relations at the annual meeting of the Western Governors' Association. This resolution affirms the governors' commitment to working with the tribes on a government-to-government basis and promotes state-tribal cooperation to resolve difficult and contentious issues. The National Governors' Association has taken a similar position. With some important changes, the IGRA has the potential to build on this foundation. Congress should not delay in legislatively clarifying the three areas I have already mentioned: consistency with state laws, the meaning of "good faith" bargaining, and the status of trust lands.

Finally, I would like to say a few words about the economic benefits of gaming. There is no question that gaming has produced employment and other economic benefits for some Indian communities. The same is true of non-Indian communities in states such as Colorado and South Dakota where gaming restrictions have been relaxed. However, I worry that as more communities and governments use gaming as a form of economic development, its value will begin to decrease. Some tribes, towns or states may begin to fund essential services with gaming revenues. Should revenues drop due to increased competition, these governments will be hard pressed to provide critical services to their people. State governments are in no position to deal with crises stemming from shortfalls in anticipated gaming revenues.

What this means is that Congress must redouble its efforts to work with states and tribes to develop alternative, long-lasting economic development programs for Indian communities. Tribal governments, like state governments, need some measure of stability in planning and providing services for their people.

Thank you for your attention. I look forward to working with you and with our Native American constituents to improve implementation of the Indian Gaming Regulatory Act. More important, I look forward to working together to provide better lives for all our citizens.



CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

WRITTEN STATEMENT OF THE
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

P.O. Box 150
Nespelem, Washington 99155
(509) 634-4711 FAX (509) 634-4116

Before the

SUB-COMMITTEE ON INDIAN AFFAIRS
INTERIOR AND INSULAR AFFAIRS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 2, 1993

The Business Council of the Confederated Tribes of the Colville Reservation (hereinafter Colville Tribes) calls on the Committee to resist the attempt by the National Governors Association (NGA) to modify the IGRA so that it comports with the positions expressed in the Resolution adopted by the NGA in February 1993. Since the passage of the IGRA in 1988 the states have consistently attempted to rewrite the law and impose their statutory and regulatory scheme on tribal gaming operations on Indian lands. Because the IGRA was never intended to require tribal gaming to mirror state law, many Indian tribes, including the Colville Tribes, have been forced to file suit to fulfill the purposes for which Congress enacted this legislation. The courts have consistently held that the IGRA was intended to benefit Indian tribes and have reject the states' interpretation of the IGRA. See Mashantucket Pequot Tribe v. Connecticut; Lac Du Flambeau Band of Chippewa Indians v. Wisconsin; Yavapai Prescott Indian Tribe V. Arizona; and the March 5, 1993 bench ruling in California. Since they have been unsuccessful in the courts or mediation because their legal position is untenable, the states are now pressuring the President, his Administration and Congress to rewrite the law.

What the states forget is that their ability to be involved with tribally conducted class III gaming at all is a result of their insistence that Congress ignore 200 years of federal jurisprudence and allow states the opportunity to participate in regulating activities on Indian trust lands.

Rather than negotiate compacts in good faith the states, with rare exceptions, have worked to protect their monopoly in state conducted gaming and insisted that state law prevented them from negotiating for class III games activities beyond those specifically authorized by state statute. When out of frustration an Indian tribe does sue, the state hides behind the 11th amendment to prevent the tribe from reaching the merits of the case. Meanwhile the state's gaming revenue continues to increase and tribal efforts to capitalize on the IGRA are stymied.

THE TIME HAS COME FOR CONGRESS TO TAKE THE STATES OUT OF TRIBAL GAMING, REAFFIRM THE HISTORIC TRIBAL/FEDERAL RELATIONSHIP AND GIVE INDIAN TRIBES BACK CONTROL OVER THEIR INDIAN LANDS. Without such action tribal self determination and self sufficiency are mere platitudes and the holding of Cabazon a pyrrhic victory.

The Colville Tribes believes its experience with the State of Washington is particularly compelling. The compact ultimately approved by the Colville Business Council severely restricted tribal gaming and did not fulfill the purposes for which Congress enacted the IGRA. Despite the sacrifices the Colville Tribes made in order to reach an agreement, the Governor refused to sign the compact as approved by the Gambling Commission.

The Colville Tribes remained at the negotiating table for over

four years. It initially thought the State's negotiating position was the result of a flawed analysis of the IGRA so suggested that position papers be exchanged between the parties. The Tribes was encouraged when subsequent court rulings reinforced the Tribes' analysis and substantiated its negotiating position. The State remained undeterred, insisting that state law prevented it from going beyond its basic position.

In an effort to reach an accord the Tribes reluctantly agreed to limitations on size, scope and type of class III gaming. It still took over a year and a half to reach agreement on the final draft after those concessions. This was primarily because the state refused to negotiate the issue of video games, its insistence on a primary state regulatory role (despite the Colville Tribes' sophisticated administrative and judicial regulatory structure) and payment of a percentage of net revenues.

Three years into negotiations the state created a multiple layer approval process consisting of state and local caucuses, legislative committee hearings and recommendation, gambling commission hearings and vote approving the compact for execution by the Governor. The state extracted concessions from the Tribes as a condition of approval at each level. If a group raising an issue did not receive satisfaction at a particular level of review, it simply raised the issue again at the next level, thus requiring the Tribes to respond again and again. For example, the representative on the state caucus of the Washington Association of Prosecuting Attorneys (WAPA) objected to the definition of "Indian lands" which allowed the Colville Tribes to site a facility on any of its

existing Indian lands, including the North Half and former Moses Reservation. When he could not convince the negotiators at the caucus level to restrict the Indian lands on which the Tribes might site a facility, he testified in opposition at each level of the public hearings on the proposed compact.

Since the IGRA clearly authorizes gaming to be conducted on the Indian lands of the Tribes acquired before October 17, 1988 (cf. 25 U.S.C § 2703(4)(b) with § 2719), the Compact defined Indian lands as set forth in the Act. Having failed to exact a change at the legislative hearing or to thwart the approval of the compact by the Gambling Commission, the WAPA representative sent the letter directly to Governor Gardner raising the identical issues. He demanded that the Governor refuse to execute the approved Compact unless the Tribes agreed to limit the location of its facilities to specific reservation lands. Despite provisions within the Compact that provided notice and participation by the State regarding locations and which enabled the State to reopen the negotiations if a particular site created unforeseen burdens on the state, the Governor refused to sign unless the Tribes agreed to the additional terms.

The State's refusal to abide by the accord as negotiated and approved by the Gambling Commission led the Colville Tribes to conclude that after four years, Washington State was not interested in finalizing a compact other than on its own terms (terms which violate the intent and purpose of the IGRA and ignore its provisions) and that the Tribes' only recourse was to file a case in federal district court under the remedial provisions of the

IGRA. The Colville Tribes knew (given the tenth and eleventh amendment defenses raised by the State in the Spokane Tribe's bad faith lawsuit under the IGRA) that the State would pursue whatever steps it could to avoid reaching the merits of the case and that class III gaming at Colville would be substantially delayed. It could not, however tolerate any further incursions into its sovereign authority and would not be blackmailed by the prospect of a few million dollars in gaming revenue in a state that operates the largest pull-tab market in the world (\$600 million wagered last year), recently brought in on line keno and conducts its own lottery with "sales projections for Fiscal Year 1993 are at \$333.5 million with a net contribution of \$120 million to the state general fund," according to Director, Evelyn P. Yenson.

Throughout the negotiations the state treated the Colville Tribes like one of its licensees, entitled to share in only a small piece of the gaming pie rather than as a sovereign government entitled to supplement governmental revenues in the same manner as the State. Washington has been so successful in that regard that it is one of the top ten gaming venues (in dollars wagered) in the United States. Its position throughout the negotiations has been hypocritical and has failed to recognize the intent and purpose of the IGRA.

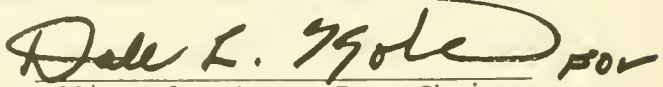
Attached to this Statement are copies of material presented by the Colville Tribes to the Senate Committee on Indian Affairs at the March 19, 1993 meeting with tribal leaders, including a copy of Mathew Dick's Testimony at the Oversight Hearings on the IGRA conducted by the Committee on March 18, 1992. The Colville Tribes

supports Chairman Inouye's statement as an accurate depiction of the events surrounding the passage of the IGRA and calls upon the members of this Committee and your colleagues in the House to pledge to turn back attempts to overturn Cabazon, and allow Indian Tribes the opportunity to engage in gaming as sovereign governments as contemplated by the IGRA by reaffirming the traditional and historical federal-tribal relationship.

The Colville Tribes opposes any moratoria or efforts by the States that would limit the conduct of class III gaming activities by Indian tribes to the same games and subject to the same regulations established by state law. Such action would effectively gut the IGRA and reverse the holding of Cabazon. If Congress is unwilling to return the conduct and regulation of gaming to the tribes and federal government as originally contemplated, it must at least correct the problem with the tenth and eleventh amendment defenses raised by the states to forestall bad faith litigation. Congress must direct the States to litigate the merits of the bad faith claim or face federal promulgation of the standards by which gaming will be conducted on the particular tribe's Indian lands against whom the defense is raised.

Thank you for the opportunity to submit this written statement. The Colville Tribes will work with the Committee to provide any other information you deem relevant regarding our particular circumstances.

Respectfully submitted,

 for

Eddie Palmanteer, Jr., Chairman
Colville Business Council



CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

P.O. Box 150
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EXCERPTS FROM COLVILLE TRIBES COMPLAINT

Filed November 6, 1992

District Court For the Eastern District of Washington
Case No. 92-0426-WFN

- 3.2 In November 1988, Chairman Mel Tonasket sent a letter to Governor Gardner on behalf of the Colville Business Council calling on the State to commence negotiations with the Colville Tribes for the purposes of entering into a Tribal-State compact governing the conduct of class III gaming by the Colville Tribes as provided in the IGRA.
- 3.3 The State did not respond until May 8, 1989. The letter from Governor Gardner simply accepted the Tribes' invitation to compact and indicated that the State was taking steps to put a negotiating team together. The first formal negotiating session between the parties did not occur until September 1989, over ten months after the Tribes initial request to negotiate.
- 3.4 Governor Gardner appointed Kaleen Cottingham to coordinate negotiations for the State and designated the Gambling Commission as the leading member of the state team. Mr. Frank Miller, the Commission's deputy director, was named the lead negotiator. Mr. Miller established a state and local caucus system to advise the state negotiators. He used the caucuses as the principle negotiator by acting as a go between and spokesperson for undisclosed interests within the caucus. The identity of the state caucus members was not provided to the Tribes until January 21, 1992 and Mr. Miller refused to allow tribal negotiators to directly respond to issues raised by caucus members. At the first local caucus held at a motel located on the Colville Reservation Mr. Miller refused to allow representatives of the Colville Tribes to participate.
- 3.6 The public policy of the State of Washington is to encourage gambling among its citizens, residents, and visitors on a massive scale. The State ranks among the top states in the union in the amount of total money wagered on gambling, exceeding \$1.4 billion last year. The single largest player is the State itself, which sold in excess of \$285 million worth of lottery tickets in 1991 with an intense media campaign on television, radio and billboards that daily

encourages its citizens to gamble. Washington is also the largest commercial pull tab (the "paper slot") market in the world. Pull tab wagers exceeded \$1/2 billion last year. Despite this fact the Defendants have restrictively viewed the scope of Indian gaming allowed to Indian tribes in Washington as contemplated by the IGRA and refused to negotiate unless limits as to the games, hours, size, bets, as well as the locations where the Tribes can conduct its class III gaming were imposed.

- 3.7 While it expressed a willingness to meet with the Tribes, the State effectively refused to negotiate unless the State was allowed a primary role in regulating the class III gaming operation. When the Tribes showed its experience, expertise and record in developing and successfully implementing regulatory enforcement programs, the State proposed that it would license and regulate nonmembers only and the Tribes would retain exclusive authority over its members. This agreement remained in drafts of the compact until the end when the State revoked its agreement and insisted on complete authority to regulate all employees as yet another additional condition of its approval.
- 3.8 The State refused to negotiate the terms under which video gaming could be conducted by the Colville Tribes. The Colville Tribes submitted draft compact language and proposed regulatory standards for video games of chance. Early in the negotiations, defendant Frank Miller stated his willingness to explore tribal conduct of video lotto, bingo, keno and pulltabs. As was its pattern throughout the negotiations, the State suddenly reversed its position repeatedly asserted such games were nonnegotiable and refused to discuss any terms under which the Tribes could conduct such gaming.
- 3.9 The Tribes recognized the need to allow both parties the need to fairly resolve disputes that might arise under the compact. As a result the Tribes proposed that the compact include reciprocal waivers of sovereign immunity. However, the State flatly refused to waive whatever immunity it might have yet insisted on an explicit waiver of immunity from the Colville Tribes.
- 3.10 The State improperly insisted on a 2% tax on the net win generated by the class III gaming conducted by the Colville Tribes as a condition for State approval of the compact.
- 3.12 On July 22, 1992, the proposed Compact was submitted to the Gambling Commission for approval and the House and Senate Commerce and Labor Committees for public hearing and comment as provided by state law. A joint hearing of the House and Senate Commerce and Labor Committees was held on August 27, 1992 in Spokane at which Miller testified strongly supporting the Compact as proposed and no opposition was raised by the Legislators present. The following day, August 28, 1992, the

Gambling Commission held a public hearing in Grand Coulee. Once again Frank Miller testified in favor of the Compact. At the conclusion of that hearing upon the recommendation of the ex officio voting member from the Legislature, the Commission unanimously adopted the Compact as proposed with one slight modification. Following the favorable action by the Legislature on the compact, and the unanimous approval by the State Gambling Commission, the Colville Business Council acting in Special Session on September 17, 1992, voted to approve the Compact.

- 3.13 Arrangements were then made by the state negotiators to schedule a signing ceremony in Olympia for October 9, 1992 to coincide with the Gambling Commission meeting. The press and public were advised and a 12:30 pm signing was scheduled. Subsequent to these arrangements the counsel to the Governor requested that the agreed upon Compact be changed yet again. The issue raised had been submitted to Governor Gardner in a letter sent by Robert Dick dated August 31, 1992. Mr. Dick had previously submitted the same issue in oral and written testimony at the public hearings before the Legislative Committees and Gambling Commission. The Gambling Commission approved the Compact in the face of the issues he raised. Mr. Dick had also been actively involved in the state caucus, as the Washington Association of Prosecuting Attorneys representative, advising the state negotiators throughout the three plus years the Colville Tribes attempted to reach an agreement with the State. Rather than respond that the concerns he raised had been considered and determined not to require abandoning the agreement as approved, the Governor's counsel canceled the signing and demanded more concessions from the Colville Tribes.
- 3.14 As a new condition for its approval, in total disregard for the requirements of IGRA, the State insists that the Tribes, solely at the State's option, negotiate what amounts to a new compact and obtain State approval of the new compact each time the Tribes chooses to locate a facility on Colville Indian Lands not to the State's liking.
- 3.15 The IGRA defines Indian lands to include all lands held in trust by the United States for the benefit of the Indian tribe or its individual members and that definition is included in the approved compact. The definition has not varied since the initial draft submitted by the Tribes to the State. The State has no authority under federal law or the IGRA to determine which of its Indian lands the Colville Tribes will use to conduct approved class III gaming.
- 3.16 On October 9, 1992, Miller and Cottingham met in Wenatchee with Tribal Chairman Eddie Palmanteer Jr. and Don Peasley, Tribal Councilman from Keller, and insisted that negotiations reopen. If the Colville Tribes refused said Cottingham, Governor Gardner would not sign the compact. All efforts by

Chairman Palmanteer and Mr. Peasley to talk directly with Governor Gardner have been rebuffed. Cottingham asserted the Colville Tribes must obtain her approval before its representatives could meet with Governor Gardner. The fact that Miller was at the meeting demanding more concessions after his involvement in negotiating the compact and obtaining its approval from the Legislature and Gambling Commission on its face reflects a lack of good faith and underscores the lengths the State is willing to go in creating a process that ensures the purposes of the IGRA and federal law are never met.



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

OLYMPIA
98504-0413

BOOTH GARDNER
GOVERNOR

October 23, 1992

Mr. Eddie Palmanteer, Jr.
Chairman
Colville Business Council
Confederated Tribes of the Colville Reservation
Post Office Box 150
Nespelem, Washington 99155

Dear Chairman Palmanteer:

I have reviewed the proposed Colville tribal gambling compact that was forwarded to me for review by the Gambling Commission. As you are aware, I was contacted about a concern with the vagueness in one area of the proposed compact. I had my attorney, Kaleen Cottingham, along with the director of the Gambling Commission, Frank Miller, fly to Wenatchee specifically to meet with you to discuss clarifying language to address this concern prior to ratification. I believe that the negotiating parties intended to deal with on-reservation facilities and did not intend to leave vague the issues of off-reservation gambling.

I had hoped that we could continue to build on our strong government-to-government relationship by fine-tuning and then ratifying the proposed compact. I take seriously my role in ratifying such a document of long-term significance for both the tribe and the state. Because we were unable to reach closure on the area dealing with off-reservation gambling facilities, I am compelled to return this proposed compact unratified to the Gambling Commission for further negotiations between the state and the tribe. As I said previously, this should not take much time, as language has previously been proposed that would recognize the location of gambling facilities off reservation while maintaining the close negotiation and working relationship between the state and the tribe.

Should these details be worked out in a timely fashion, a ceremony to commemorate the signing of the compact can quickly be arranged. I look forward to hearing back from the Gambling Commission on these efforts.

Sincerely,

Booth Gardner
Governor

The intent of this compact is to provide greater flexibility due to the remote nature of the Tribes Reservation. Therefore, should the Tribes intend to utilize Colville Tribal Lands located outside the Reservation boundary for any class III gaming facility, the State reserves the right to reopen any provision of this compact for renegotiation. Such negotiations shall be governed by the provisions of the Act. Provided further, should the State reopen negotiations, the Tribes shall not proceed until such time as any subsequent negotiation is completed and any amendment(s) to this compact are ratified in accordance with the Act.

p 11 located on the Res

located on the Res

p 12 It is the intent of the parties

p 13 Provided

Proposed on
10-9-92 in
Wenatchee, Oregon



CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

P.O. Box 150
Nespelem, Washington 99155
(509) 634-4711 FAX (509) 634-4116

October 12, 1992

Honorable Booth Gardner
Office of the Governor
Legislative Building
Olympia, WA. 98504

Dear Governor Gardner:

The Colville Tribes is prepared to proceed with signing the Compact as ratified by the Colville Business Council and approved by the Legislature and Gambling Commission. As you are aware Mr. Miller and Ms. Cottingham met with myself, our tribal attorney and Don Peasley last Friday and proposed language to modify the approved Compact. I believe it is too late for the State to be proposing new provisions. This is particularly so since the Compact as approved adequately addresses the concerns raised by the State.

I am willing to schedule the signing ceremony at your earliest convenience. If you disagree that we can proceed with the Compact as adopted, I believe it is imperative that we meet as the leaders of our respective governments so that our positions can be made clear. I am willing to meet at any location at your convenience as soon as possible. I am available any day this week except October 14th when the Tribes is hosting Speaker Thomas Foley and his staff. If your schedule permits, the Colville Tribes would be pleased to have you as a guest on the houseboat trip we have scheduled that day.

I must say I am rather disappointed with the manner the response to my September 21, 1992, letter was handled. Shortly after it was sent I was informed that the signing was to be held October 9th in Olympia. I received a call from Frank Miller on Monday, October 5, 1992 asking to meet the next day in Spokane to renegotiate the Compact. The Tribes respectfully declined since the Compact had already been approved by the Gambling Commission. I was then asked to attend the meeting Friday, October 9th in Wenatchee with Ms. Cottingham and Mr. Miller. When I asked if I could meet with you personally, I was told not until the Colville Tribes agreed with the newly proposed language.

I called your office on Friday afternoon to directly request a meeting with you. I was told I needed to put such a request in writing. As you know, I did that in September and have yet to

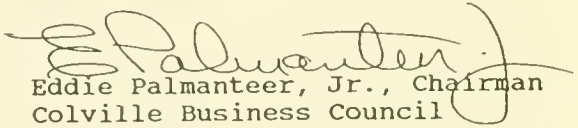
receive a response from you. I hope we are able to meet soon and sign the Compact currently before you.

After three-plus years of very intense negotiation it is time to move ahead with implementation. The Compact as approved has renegotiation provisions and adequate safeguards in place. The Colville Tribes wishes conclude this process so that we may move forward in partnership with the State to develop class III gaming as contemplated under the IGRA for the benefit of the Tribes and its members. The Tribes has foregone millions of dollars in gaming revenue these last four years to work in good faith with the State. Let us not destroy that foundation now.

I look forward to your timely response.

Very Truly Yours,

COLVILLE BUSINESS COUNCIL


Eddie Palmanteer, Jr., Chairman
Colville Business Council

EP:BD/vr

cc: subject
chrona



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Bruce Dickach, Attorney
 Veronica Goodrich, Assistant
 Anne Jack, Office Manager
 Veronica Redburn, Secretary
 Alan C. Sney, Attorney
 Michael Taylor, Attorney

DATE: October 12, 1992

TO: Frank Miller, Director
 Washington State Gambling Commission

FROM: Eddie Palmanteer, Jr., Chairman *EP*
 Colville Business Council

RE: Proposed Amendment To Tribal/State Compact

I presented the language you submitted to the Colville Business Council for its consideration as I promised. The Council rejected the State's offer to reopen negotiations. The Council unanimously determined that the Compact as approved by the vote of the Gambling Commission on August 28, 1992 and ratified by the Business Council on September 17, 1992 is the Compact that shall govern the conduct of class III gaming under the Indian Gaming Regulatory Act on Colville Tribal Lands.

Former Chairman Stensgar noted that you had promised that you would support the Compact we negotiated and do everything in your power to ensure its passage. Rather than requesting the addition of new language and a reopening of the negotiation process, the Tribes expected you would convince the Governor's staff that the Compact as negotiated and approved adequately protects the State's interests thus obviating any need for proposing new language which the Tribes views as tantamount to bad faith.

I have this date sent a direct communication to Governor Gardner calling on him to sign the Compact as approved. I hope you can lend your support to that position and we can move forward together to implement the Compact.

EP:BD/vr



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E R

10/6 ✓

Memorandum

DATE: October 2, 1992

TO: Mary Prevost
 Washington State Gambling Commission

FROM: Bruce Didesch *BWD*
 Reservation Attorney

RE: Meeting with Governor's staff on 10/5/92
 on Colville Tribes/Washington State Compact

It is my understanding that the signing ceremony will proceed on October 9, and that your meeting Monday is simply scheduled to clarify provisions of the Compact and brief the Governor's staff.

I have previously discussed with you and, more recently Director Miller, the specific terms of the Compact that insure local interests are considered when the Tribes locates a facility on its tribal lands. As you well know, and I hope the Governor's staff realizes, the Tribes is unable to site a facility on lands acquired after 1988 without the approval of the Secretary of the Interior. Even then it can only do so after consultation and approval of the Governor.

The Compact as currently approved by both the Washington State Legislature and Gambling Commission is a finely balanced document. The fact that individuals on both the tribal and state side are questioning its terms reflect the give and take that went into it and which is built into the process created by the IGRA itself.

You have requested that I provide additional information regarding the Tribes' off-reservation land ownership. As you know, the Colville Reservation was set aside by Executive Order in 1872 and extended to Canada. Pursuant to an agreement entered into between the United States and the Colville Tribes in 1892, the North Half of the Reservation was opened to public settlement. Individual allottees, however, retained their allotments on the North Half if they so chose. The few remaining allotments continue to be held in trust by the United States for individual members of the Tribes.

Michael Taylor,
 Alan C. Stry,
 Bruce Didesch,

Attorneys At Law

Alice Jack,
 Office Administrator

Veronica Reddick,
 Assistant III

Individual tribal members also hold allotments on the former Moses/Columbia Reservation which extends from the North Shore of Lake Chelan to the Canadian border. Finally, the United States allotted land to individual members of the Wenatchi tribe in the Cashmere Valley. In total the United States holds approximately 30 parcels of land in those areas in trust for individual members of the Colville Tribes. The parcels are isolated and, with the exception of Wapato Point, are far removed from any city.

I have already provided you with copies of the advisory questionnaire submitted to all of the members of the Colville Tribes in October 1991. As the results of that questionnaire indicate, it is the desire of a majority of the membership that the Colville Tribes establish its gaming facilities in conjunction with the recreational amenities the Colville Reservation has to offer. The creation of employment opportunities, an express goal of the IGRA, also appears to have been foremost in the tribal members mind when voting.

It is difficult to provide employment opportunities to members, if the proposed work place is located in a remote, isolated location. Furthermore, the Tribes has committed to establish the initial facility on the Colville Indian reservation and has previously discussed (ad nauseam) the provisions of the compact that provide adequate safeguards to the state to insure its citizens interests are being met regardless of which location the Tribes ultimately chooses to develop its gambling establishment.

It is the Tribes' position that the issue raised by Mr. Dick is a red-herring and is directed to concerns that may arise in other compact negotiations. The issue was presented at both the legislative and gambling commission hearings and, after consideration of the testimony and written comments, the Compact was approved as proposed with a small modification.

The Colville Tribes hopes that the Governor's staff does not succumb to eleventh hour efforts to derail over three years of government to government negotiations. We look forward to the signing ceremony in Olympia on Friday to bring this process to an end and anticipate establishing a positive relationship as we work together to implement the Compact. Thank you.

BD/vr

cc: Eddie Palmanteer, Jr., Chairman
Dale Kohler, Vice Chairman
Jude Stensgar, Colville Business Council
Don Prasley, Colville Business Council



CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

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COLVILLE BUSINESS COUNCIL

September 21, 1992

Honorable Booth Gardner
The Office of the Governor
Legislative Building
Olympia, Washington 98504

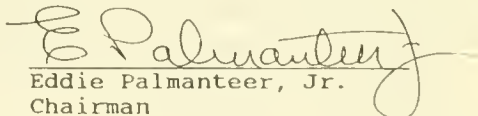
Dear Governor Gardner:

I am writing to inform you that the Colville Business Council voted to approve the proposed tribal/state compact on Thursday, September 17th. Since the compact has already completed the state review process and was recommended for approval, I believe it is ready for our respective signatures. Friday, October 9, 1992, has been discussed as a possible date. A delegation of the Colville Tribes would be more than happy to come to Olympia for the signing ceremony. However, I would like you to consider being our guest and extend this invitation on behalf of the Colville Tribes to come to the Reservation.

Should your schedule permit, the Colville Tribes would be happy to host you. The Tribes is anxious, however, to get the compact signed so that it may be forwarded to the Secretary of Interior for final approval. I, therefore, request that the arrangements by our staff be finalized soon so that we may meet in October.

I am looking forward to seeing you again. The negotiations were difficult at times but I believe we have a compact that will serve each of our governments well. I hope to hear from you soon.

Very truly yours,


Eddie Palmanteer, Jr.
Chairman

cc: Dale Kohler, Vice-Chairman
Dan Silver, Governor's Office
Frank Miller, Gambling Commission Director
Bruce Didesch, Reservation Attorney
Mary Prevost, Lead Negotiator



STATEMENT OF EDDIE PALMANTEER, JR.
CHAIRMAN OF THE CONFEDERATED TRIBES
OF THE COLVILLE RESERVATION

Before the

HOUSE AND SENATE COMMERCE & LABOR COMMITTEES
WASHINGTON STATE LEGISLATURE
AUGUST 27, 1992

Mr. Chairman, members of the Joint Committee my name is Eddie Palmanteer, Jr. I am the Chairman of the Business Council of the Confederated Tribes of the Colville Reservation (Colville Tribes). I appear before you today with the Tribes' legal counsel, Bruce Didesch, from our Office of the Reservation Attorney. On behalf of the Colville Tribes, I want to thank you for this opportunity to present the Tribes' view on the Proposed Tribal/State Compact and urge your support.

Before I discuss the Tribes' experience negotiating our compact with the State and its details, I wish to provide some background on the Colville Tribes. The Colville Tribes is a confederation of twelve tribes with a current enrollment of 7,796. The tribes constituting the Colville Tribes historically governed and lived in an area ranging south from the Columbia River, west to the Cascade Range, east to the Spokane River and Colville Valley and north into Canada. The present Reservation was established by Executive Order of President Grant in 1872 and exceeded three million acres. The North Half of the Reservation was returned to the public domain in 1892, but the Tribes retains certain lands, hunting, fishing, water,

investment of \$10,000.00 and eight employees. The first two years of operation were so successful that the Tribes was able to build a new million dollar bingo hall on the Reservation near Okanogan, Washington. The Tribes currently employs 23 individuals at the hall, of whom 21 are tribal members.

In addition to providing employment opportunities to tribal members, the bingo enterprise has started a college scholarship program for members interested in pursuing education in the field of business. Indian business clubs sponsored by the Tribes have been developed at local high schools and operate the gift shop located in the bingo hall. The enterprise has also provided funding for numerous tribal programs. In addition to directly benefiting the Tribes and its members, the bingo enterprise worked with local governments and the Bureau of Indian Affairs on a local street improvement project that was funded in part from bingo revenue. Additionally, it contributes to numerous local charities, including county police charity fund drives. Tribal Bingo is a welcome part of the business community in the Okanogan valley and has had a positive effect on the local economy.

The Colville Tribes intends to build on the experience and success it has gained operating its class II (as defined in the IGRA) gaming enterprise as it develops its class III operation under the Compact. I want to emphasize that the Colville Tribes is fully committed to ensuring that the games, the enterprise itself and anyone associated with it, whether as player, employee, supplier or regulator, will be free from criminal or other corrupting influences. The Colville Tribes has successfully operated its bingo hall free from corruption, embezzlement, or other unscrupulous activity since it opened over five years ago. It is

wagered last year.

I cite these figures to underscore the Colville Tribes' right under the federal law to engage in the activity authorized in the Compact. We as a tribal government will engage in the same type of activity that Washington promotes daily for similar governmental purposes, particularly with regard to the state lottery. When you juxtapose the extensive amount of gaming authorized within the State with the purpose and language of the IGRA and its legislative history, the unmistakable conclusion is that Indian tribes in Washington are entitled to engage in the type of gaming allowed under this Compact.

Quite frankly, the Colville Tribes believes the IGRA contemplates a much broader scope of gaming than is authorized in the proposed compact. The State and the Colville Tribes will likely never agree as to how much gaming is allowed under the federal law. The federal courts will undoubtedly be called upon to resolve that question in the context of other negotiations. The two parties, however, have agreed to set aside their differences and have negotiated a Compact that is designed to protect the public, provide for joint regulation by the Tribes and the State of the games authorized and enable the Tribes to capitalize on the opportunities provided under the IGRA. On behalf of the Colville Tribes I ask that you endorse the Compact as proposed and recommend that it be approved by the Gambling Commission so that it can be submitted to Governor Gardner and forwarded to the Secretary of Interior for final approval.

The Colville Tribes submitted its request to negotiate compact under the IGRA to Governor Gardner in 1988. It has been negotiating with the State for over three years. It

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view of where the tribe is at in relation to gaming on our reservation.

We are located in North Central Washington and it is a very sparsely populated place. We began our bingo in August 1987 in a gymnasium at our community center in Omak, Washington. Omak, Washington I think has a population of about 6,000 people. We began it in the gymnasium with a contribution of \$10,000 from the tribe. We haven't put any money at all in the bingo hall since. The bingo has flourished, even though it is a sparsely populated place and within a couple of years was able to develop a bingo hall that cost \$1 million. Initially, we employed eight people. Now we have employment of 23 individuals and 21 of them are tribal members.

In addition to providing employment opportunities, the bingo enterprise also started a scholarship program for tribal members that wish to pursue careers in business management and in the business field.

Also, the revenues have been dedicated to the Indian cultural clubs on the reservation that have expressed need in the past and the tribe hasn't been able to meet those needs. They've dedicated a portion of the funds to the cultural enhancement and preservation of the Colville Tribes within the governmental services that we have that protect those things. Not only that, it has also I believe benefited the surrounding communities.

When we first started bingo in the gymnasium center at East Omak, after 1½ years, it was contemplated to build a bingo hall and the neighboring town of Okanogan got into sort of a bidding match with each other on trying to lure the Colville Tribal bingo to each one of those towns because they knew the benefits of having that bingo enterprise within their community. We finally did locate in Okanogan, Washington. After we located there, we went into a cooperative agreement with the City of Okanogan and the county and developed a road structure there for the bingo enterprise. So it has benefited not only the tribal people but also the local community.

After the passage of the Indian Gaming Regulatory Act with its expressed intent to benefit and promote tribal self-sufficiency, economic development and strong tribal government, the tribes are looking forward to really enhancing our position in economic development because in the last few years, especially within the last two administrations, the moneys that have come through the Federal Government to the tribe have really been severely cut back. Because of that, our tribal programs have been severely cut back, the services that we have been able to provide for our tribal members are really depleted.

With the passage of the Indian Regulatory Act we were really anxious to move forward in trying to develop something like that because we could see the possibilities. I think with the sophisticated administrative process that we have set up and the way the tribe has approached law and order on the reservation, we believe we could be successful in developing a gaming enterprise that would directly benefit our members and provide those government services that were lost when the last two administrations cut back those funds.

nomic development on our reservation and to generate badly needed tribal revenue. We have been successful. We hope that you and this committee will not let the adverse, often false publicity about Indian gaming weaken your support of our efforts.

Our casino is projected to open on June 1, 1992 and again, we will be employing approximately 150 tribal members that otherwise be on welfare.

We'd like to thank you, Mr. Chairman, and I would be happy to answer any questions you may have.

Thank you.

[Prepared statement of Mr. Jones appears in appendix.]

The CHAIRMAN: Thank you very much, Mr. Chairman.

I think recently the Governor of your State was challenged by the Attorney General as to his right to enter into compacts. Can you tell me what has happened?

Mr. JONES: Yes, sir; the Governor was challenged by some of the legislators.

They asked the Attorney General if the Governor had a right to sign the compact without legislators approval, upon which our compact was signed with the State of Washington without the legislators' approval.

The Attorney General had answered and he said that because of the Federal enactment of and acceptance of our compact, our compact is then legal because of the Federal action. About 1 week or 2 weeks ago, the State of Washington legislators finally had a meeting and approved the Governor to sign. So we are in fine shape there in the State of Washington.

The CHAIRMAN: So the Governor is now the authorized public official to sign compacts there?

Mr. JONES: That is right. The legislature has adopted legislation that will enable the Governor to sign without any questions now.

The CHAIRMAN: Thank you very much, Mr. Chairman. As always, it is good to see you.

Now, may I call on Council Member Matthew Dick of the Colville Confederated Tribes?

STATEMENT OF MATTHEW DICK, COUNCIL MEMBER, COLVILLE CONFEDERATED TRIBES

Mr. Dick: Thank you, Mr. Chairman.

For the record, my name is Matthew Dick and I am a member of the Business Council of the Confederated Tribes of the Colville Reservation. I serve as Chairman of the Cultural Resource Committee and as Chairman of the Fish and Wildlife Committee.

I am here today with one of our staff, Bruce Didesch from the office of our reservation attorneys. I have served as a principal negotiator with the State of Washington since we began the tribe-State compact negotiations.

Also, on behalf of the Colville Tribe, I would like to express my appreciation for your commitment to working on Indian issues that affect Indian people. We thank you for that.

Before I start talking about the problems that we have had with tribe-State compacts and some of the associated problems we have had with the State in relation to that, I would like to give an over-

really tried to make the process work and stay within the parameters of the act.

Why do we not sue since the IGRA provides a mechanism for tribes to allege bad faith and obtain a judicial remedy? First, as just stated by the Mashantucket, they sued and it was over 2 years before they came to any kind of resolution of it. In the meantime, they spent 1 do not now how many thousands of dollars fighting off the attacks of the State of Connecticut and the Nevada Resort Association and the other gaming interests.

The Spokane Tribe in the State of Washington began their negotiations with the State of Washington about the same time we did and they became a little more frustrated faster than we did and they did file suit probably about 1 year or 1½ years ago. Unfortunately, their case hasn't proceeded very far being stuck in a bunch of preliminary procedural motions including the 11th Amendment issue which they testified on before the House Interior and Insular Affairs Committee in January.

It is unlikely that they'll reach the substantive issues of what constitutes bad faith and what is and what is not allowable in the State of Washington under the Indian Gaming Regulatory Act for many months to come. In the meantime, critical revenues are being unrealized, in our opinion, illegally and contrary to the act's intent.

The Colville Tribe supports the position taken by the Spokane and the Mississippi Choctaw Tribe in their testimony concerning the need to resolve the 11th Amendment issue.

What is particularly galling about the State's strategy is its efforts to encourage tribes to remain at the negotiating table while remaining firm on its position regarding allowable games and scope and at the same time aggressively pursuing the 11th Amendment argument. It appears once again the whipsaw mentality is being applied here. The State essentially says, negotiate on our terms or you can turn around and face the Attorney General's Office in litigation that is going no where because we will take whatever steps as a State to prevent you from reaching the substantive merits of the litigation. Two tribes have already succumbed to the State's strategy and it is proudly now marketing that strategy nationwide.

Many have already testified that the remedial provisions of the act are inadequate. Even if the Spokane Tribe prevails on the 11th Amendment issue in the Ninth Circuit, the State is determined to take the case to the Supreme Court. Once that is resolved and the Court ultimately finds the State failed to negotiate or acted in bad faith, the act itself only allows for more negotiations for a 60-day period. Then if the issue is not resolved, it goes to the next level of mediation, and then finally the Secretary of the Interior. Meanwhile, the legal landscape changes, the act may be changed and the State of Washington has accomplished its objective which is to delay Indian gaming except on its terms until such time that the State can effectively compete or in some other manner prevent the tribes from capitalizing on the opportunities clearly contemplated by Congress when this act was enacted.

This committee and Congress can help Indian tribes such as those located in the State of Washington which do not have the

benefit of negotiating with a State like Minnesota by expressing no tolerance to any further delay and support. That if the 11th Amendment arguments prevail, then the finely balanced provisions of the Indian Gaming Regulatory Act are destroyed and the law of the land as expressed by the Supreme Court in *Cabazon* applies.

Indian tribes, particularly those of Washington State need a mechanism to force the State of Washington to negotiate, not dictate. As long as there is little consequence to their procedures, the State will delay. Meanwhile, the expressed legislative intent of the statute is circumvented.

We also ask the committee to take a strong position with the National Indian Gaming Commission and the States as to allowable class II electronic and video enhancements of the enumerated games. If the issue is law enforcement we should address it but we should not mask it by emasculating and tinkering with the act to essentially avoid the issue.

The Colville Tribes is committed to operating clean games and preventing organized crime from infiltrating these games or the tribes gaming enterprises. As our Chairman stated throughout our negotiations, this is our reservation, this is where our people live, this is where we intend to live from now on. We are not going to do anything to dirty our bed, this is where we sleep, this is where we stay. So anything we do, we are going to make sure that our place is a good place to live. If it is keeping out those criminal elements and those organized crime elements, that is what we'll do. It is our place, we are not going to dirty it. That was to address the concerns voiced this morning about who is watching the store. Nobody is in better position than the tribes themselves to watch that store, specially for the Colville Tribe.

I also believe that the tribe's record of the last 3 years in implementing or attempting to implement this act speaks for itself. We have not aggressively pursued alternatives as I stated before, choosing instead to work through this process that was created. We have submitted comments to the Gaming Commission repeatedly, sat down and faced negotiations with high level representatives of the tribes ready to develop a reasonable approach to the compact with the State.

For example, early on the tribes agreed with the State that because we didn't have the mechanism, we didn't have the wherewithal that the State would do the background checks, they would do the criminal checks, the licensing of the people that weren't tribal members and we agreed that strict minimum regulatory standards would be developed for the gaming operation. In fact, much of the tribe's proposed compact was modeled after Mashantucket's compact because of the similarity of law between the State of Connecticut and the State of Washington.

The tribes are truly committed to develop a partnership with the State. The State, however, believes that in keeping the gaming small, it will in essence self regulate. Therefore, in a State where \$1.2 to \$1.5 billion was wagered last year, it is only willing to authorize each of the 26 tribes to have no more than a \$10 to \$20 million operation. It is hypocritical for a State that endorses such extensive gaming on its way to being ranked fourth nationally, to take such a restrictive position as to what is allowable under the

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF GILBERT JONES, VICE PRESIDENT, FT. McDOWELL MOHAVE, APACHE INDIAN COMMUNITY

My name is Gilbert Jones, and I am an elected member of the Tribal Council and Vice President of the Ft. McDowell Mohave-Apache Indian community (Ft. McDowell). On behalf of President Clinton Fataa, the rest of the Tribal Council, and our entire community, I thank this Committee for the opportunity to present testimony regarding the tribal-state compact process that is authorized by the Indian Gaming Regulatory Act.

Ft. McDowell is a small but proud, federally-recognized Indian nation, occupying approximately forty square miles on the outskirts of Phoenix, Arizona. We have about 630 tribal members, approximately 50 of these members live on the reservation, and approximately one-half of the tribal members are under the age of 16. Since 1980, our tribe has been engaged in gaming on the reservation, as defined by the Indian Gaming Act. Principally, those games take the form of traditional bingo, video bingo, and other video gaming.

Our tribe has benefited financially from our gaming operations. As a result, we have been able to decrease our unemployment rate, decrease our dependence on federal aid, and increase the quality of life on our reservation. In short, for the Ft. McDowell Tribe, our gaming operations mean the difference between having adequate social services and having skeletal or nonexistent ones.

I testify before this Committee regarding the tribal-state compact process authorized by the Gaming Act. In creating the compact process, this Committee and Congress took a middle ground and recognized both state interests and tribal interests in gaming.

In approaching this matter, Congress could have allowed tribes to operate class III gaming without any limitations or it might have attempted to prohibit class III gaming altogether on reservations. Instead, Congress, on the recommendation of this Committee, chose to take the middle ground and to require states and tribes to negotiate the presence of class III gaming on reservations.

The negotiation mechanism is consistent with established principles of Indian sovereignty and reinforces the notion that, unless authorized by an act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. Even in those limited instances in which Congress has enacted laws allowing the limited application of state law on Indian lands, Congress has required the consent of tribal governments before state jurisdiction can be extended to reservations.

Congress appropriately embraced these fundamental principles when it enacted the Indian Gaming Act, and Congress clearly intended that tribes and states would negotiate class III gaming compacts as independent sovereigns and that tribes would give their consent before state gaming laws would apply to them.

The Ft. McDowell Tribe has, in good faith, attempted to engage in class III gaming negotiations with the State of Arizona. Unfortunately, due to a perceived

Many years ago when I first became Chairman, I suggested to all the tribes that they seriously consider changing the election day because most tribes have a special day for tribal elections that does not coincide with national elections. So on your tribal elections you get a good turnout, but on the national elections, the turnout is low. Most Members would say, why should we pay attention to people who do not vote?

If you had your tribal elections on the same day and in the same voting place, it may make a difference. Then politicians will consider you with some seriousness because votes would determine their life or death politically. Until you can demonstrate that political muscle, do not complain too loudly. I would suggest you very seriously look into that.

I realize this has been a frustrating experience for all of you, but I have found that the history of our relations with Indian nations has been one chapter after another of frustration. I am hoping to minimize that. We will consider your testimony very carefully. We have another hearing to conduct on May 6 and I suppose some of you will be returning and when we have completed our hearings, I can assure you that we will act on it.

This committee is not known to just receive testimony and file it away. Every piece of legislation that comes out of here has been the result of consultation with Indian country, every bill that has come through here. Therefore, your voice is heard and your voice is very important. So even in your frustrations, never let it be said that I do not listen to you people.

With that, thank you all very much.
[Whereupon, at 3:18 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

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